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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Claudia Wilken, Judge

IN RE: COLLEGE ATHLETE NIL)
LITIGATION.)
) NO. 20-03919 CW
)
)

Oakland, California
Thursday, September 5, 2024

TRANSCRIPT OF VIDEOCONFERENCE PROCEEDINGS

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1 Thursday - September 5, 20242 2:30 p.m.3 P R O C E E D I N G S4 ---000---5

THE CLERK: So, appearing for Plaintiffs presenting
6 argument is Steve Berman and Jeffrey Kessler.

7

Also appearing would be David Greenspan, Jennifer
8 Parsigian, Adam Dale, Neha Vyas, Benjamin Siegel, Emilee Sisco
9 and Stephanie Verdoia.

10

Defense Counsel for NCAA is Rakesh Kilaru. Also appearing
11 is Calanthe Arat.

12

Defense Counsel for ACC is Chris Yates.

13

Defense Counsel for Big Ten is Britt Miller.

14

Defense Counsel for Big 12 is Natali Wyson and Angela
15 Zambrano.

16

Defense Counsel for Pac-12 is Whitty Somvichian.

17

Defense Counsel for SEC is Robert Fuller and Katie Reilly.

18

(Pause in proceedings.)

19

THE CLERK: The Menke women objectors' Counsel
20 appearing -- making an appearance or speaking is Steven Molo.

21

Also appearing is Eric Posner, Elizabeth Clarke, William
22 Cooper, Alexandra Eynon, Catherine Martinez, Swara Saraiya,
23 Sara -- I'm not going to try it -- T-O-F-I-G-H-B-A-K-H-S-H --
24 and Lois Ahn.

25

And for the Colorado objectors oh, Mr. -- I have already
forgotten --

1 **MR. BROSHUIS:** It's okay.

2 **THE CLERK:** And also appearing with Mr. Garrett

3 Broshuis is Sean Grimsley and George Zelcs.

4 Amicus Curiae Counsel is Richard Volante and David West.

5 (Pause in proceedings.)

6 **THE CLERK:** The Court is now in session. The
7 Honorable Claudia Wilken is presiding.

8 Calling civil case numbers 20-3919, In Re: College Athlete
9 NIL Litigation and civil case number 23-1593, Hubbard versus
10 National Collegiate Athletic Association.

11 Counsel and all parties listening in, this proceeding is
12 being reported. Any other recording of this proceeding either
13 by video, audio, including screenshots or other copying of the
14 hearing is strictly prohibited.

15 Also, any counsel that is not currently speaking to the
16 Court, please mute your microphones.

17 Thank you.

18 (Pause in proceedings.)

19 **THE COURT:** Good afternoon, everybody. We have a lot
20 to cover and a lot of people who want to talk.

21 So, I -- I think what I will do is start with some notice
22 and claim form kind of picayunish issues and then move onto the
23 more substantive issues and start by asking some of the many
24 questions that I have for some of you.

25 And then at some point I will ask if anybody really has

1 something to add that hasn't been discussed, and I will try to
2 give everyone some time to do that; but I'm most interested in
3 getting the answers to the questions that I have after reading
4 all your briefs and the declarations and the expert and the
5 cases and all of that.

6 So, with respect to the notice, I have some issues with
7 the notice in the claim form; and I don't quite know how to
8 deal with them.

9 I don't know if I can conveniently edit them or if I need
10 to tell you what they all are or what exactly to do, but I'm
11 just -- I will give you some ideas of some things that I would
12 like to have changed, and then we can talk later maybe about
13 how best to go about doing it.

14 One thing I always like to put in my notice is since this
15 happened to me once was a final hearing date had to be changed,
16 and the notice had said "it will be on such and such a date;"
17 and it was a big hassle trying to get everybody to change the
18 date.

19 So, any place where it says anything about the final
20 hearing date, it should say "subject to change." There is one
21 place where it does do that, but I would like it to be every
22 place.

23 **THE CLERK:** Your Honor, I'm so sorry to interrupt. I
24 do need to start the recording.

25 **THE COURT:** Oh, okay.

1 **THE CLERK:** I'm so sorry.

2 **THE COURT:** No problem.

3 **THE CLERK:** Okay, thank you.

4 **THE COURT:** Sure. We have our court reporter. And,
5 by the way, in addition to it being forbidden to record any --
6 privately any of the video or audio, it's also the case that
7 the official record of the proceeding is the court reporter's
8 transcript and although there might be a recording made by the
9 Zoom program or application, that -- neither that nor any
10 unauthorized recordings that anybody else might want to make
11 are not the official record of the case.

12 So, the continuance, I would like it to be clear to
13 everybody that in order to object, they need to make a written
14 objection. And in order to speak -- and I don't like to use
15 the word "appear" because that -- some people think -- lay
16 people might think that "appear" means just be there; but they
17 can object but they must object in writing.

18 They can ask to speak, but I don't know how many people
19 are going to want to speak. So, it may be the case that not
20 everybody who wants to speak will be allowed.

21 So, they need to be told that they may be allowed to speak
22 if they file a written objection and ask to speak.

23 **MR. BERMAN:** May I ask a question on that, Your Honor?

24 **THE COURT:** Yeah.

25 **MR. BERMAN:** Steve Berman. Because we are already

1 getting questions about this.

2 In the event that you gave preliminary approval is the
3 final hearing going to be a video or in person?

4 **THE COURT:** What I'm thinking of doing -- and I have
5 been checking around for this because I haven't done it
6 before -- is what we call a hybrid proceeding in which I would
7 be in court; the lawyers who are speaking would be in court,
8 but we would also have availability of remote access so that
9 others -- I'm just anticipating that, perhaps, there might be
10 more people wanting to attend than we can fit in our courtroom.

11 So, my idea would be to have some people in person and
12 then have remote access so that more people would have access
13 to it.

14 I would give out certain number of seats to each party.
15 You know, you can have four seats; and you can have four seats.
16 The press can have X number of seats. Maybe we will have an
17 overflow courtroom where there will be a monitor that will have
18 a Zoom panelist application running.

19 And then other people could either be elsewhere in the
20 courthouse or they can be at Starbucks across the street or
21 whatever. That's what I have in mind, but let's wait and see
22 how it looks.

23 Okay. So, I do think that the class definitions, very
24 simple ones, but just a line of what the classes are should be
25 in the notice because the FRCP says so.

1 I think there should be some explanation about the
2 damages; just a line, like, what you mean by lost
3 opportunities -- well, lost NIL opportunities and what's that.

4 I don't want to make this thing any longer than it has to
5 be, but I do think we should say something that a layperson
6 would grasp as to what the forms of damages are.

7 We have things like "you were denied compensation
8 opportunities." Well, it's not -- I mean, that sort of makes
9 it -- you sound like you went to your athletic director and
10 said, "Can you please pay me a salary?" And she said no.
11 That's not how it works, of course.

12 So, the persons -- people aren't actually denied
13 opportunities. There is -- it's just understood by everyone
14 that there is no -- and I'm going to call it "pay-for-play"
15 because it is easier -- that there is no pay-for-play.

16 The distribution plan, I think, should have a little
17 something in it -- in the notice about how that's going to
18 work, and I also think -- this is out of order -- but I also
19 think the distribution plan or I'm wondering whether the
20 distribution plan ought not to be in the settlement agreement.

21 So why don't you-all give that some thought. Again, I
22 don't want to drag everything out and make it a lot longer than
23 it needs to be, but there is nothing that explains how this
24 money will be distributed just logically.

25 Are there checks? I saw a mention of Venmo. It's going

1 to be every year for ten years. How is -- who is going to keep
2 track of that and how are they going to do it?

3 We can't address everything, but I feel like there should
4 be some explanation of how this money is going to be
5 distributed.

6 This is Hubbard -- and we will talk more about Hubbard
7 later -- but I have a problem with the Hubbard claim form.

8 It has these four criteria, and you are supposed to fill
9 in a little box whether you were eligible, whether you were --
10 I don't know what they are. There's four things there -- but
11 they aren't meaningful, at least the way you have got it fixed
12 up now.

13 The criteria for getting an academic achievement award
14 under this rubric is to -- that your school was giving out
15 those awards. Your school had certain criteria and you met the
16 criteria.

17 So, to ask those four things about eligibility and
18 academic standing or whatever they are, may or may not be what
19 your school wanted nor is there any place for you to explain
20 how it is that you qualified.

21 And then in the sort of catchall provision at the bottom
22 where it says, "Well, do you think you ought to get paid anyway
23 even though you don't qualify? If so, say why," and there is
24 no explanation for how a person might possibly qualify for that
25 because you are a nice person? Because you are financially

1 needy?

2 What are -- are there criteria and what are they so they
3 know what to write down if they want to be considered for that.

4 Okay. So remind me to get back to this and tell me at the
5 end how you think it would be best; if you want to take another
6 shot at these notices and claim forms or if you want me to try
7 to do it and give it to you and see what you think.

8 There is also some inaccuracies. There is one place in
9 the house claim form -- it's the last page, shaded area --
10 where one place it says the start date is 2019 but it is really
11 2016. So somebody needs to go through it with a fine tooth
12 comb and make sure it's all -- there is no inaccuracies.

13 I know that you did this under short notice and it was
14 very high pressure, and there is bound to be errors. And I'm
15 not being judgmental, but we need to check them and make sure
16 they are all correct.

17 (Pause in the proceedings.)

18 **THE COURT:** Okay. So, we had our litigation classes
19 and three damage classes were certified; one injunctive relief
20 class was certified. There was a motion to certify in Hubbard,
21 but it wasn't ruled on because the settlement was in progress.

22 I -- if you could tell me briefly -- I guess, it might be
23 Mr. Berman who addressed this -- what the difference is between
24 the certified classes and the litigation classes. And to the
25 extent there are differences, why are they?

1 I know that one is the certified class -- the settlement
2 classes add the scholarship limit claim and the pay-for-play
3 claim; but as far as either other claims or -- and/or the start
4 and stop dates and/or who is in it -- is it just P5 or is it
5 all of D1 -- are those factors different as between the
6 litigation certified classes and the settlement classes?

7 Can anyone do that off the top of their head briefly and
8 efficiently?

9 **MR. BERMAN:** Jeff, do you have that off the top of
10 your head?

11 **THE COURT:** If not, you can write it up later.

12 **MR. BROSHUIS:** Your Honor, I can explain a little from
13 my point of view if you'd like me to.

14 **MR. KILARU:** Your Honor, I can also explain from the
15 point of view of the parties, and Mr. Berman and Kessler can
16 correct me if I get anything wrong.

17 I believe -- and, again, they can correct me if I get any
18 of this wrong -- as far as the damages classes, I don't believe
19 that the house football and basketball players class, I think,
20 is largely, as you certified it, except it now folds in the
21 additional claims as you mentioned for pay-for-play.

22 The same is true of the women's basketball class.

23 The lost NIL opportunities class, what I think is what --
24 I think you called it that, has now been broadened in the house
25 to encompass claims for all of Division I.

1 And then the pay-for-play -- the additional sports class
2 similarly encompasses all of Division I and all athletes who
3 were not in Power Five basketball and football.

4 Is that about, right, Mr. Berman and Kessler? I think
5 that's the general summary.

6 **MR. KESSLER:** That is essentially correct. The other
7 change is we have a cut-off date order for the damages classes
8 of September 15th, 2024.

9 When you did the certified classes, it was a cut-off date
10 for those litigated classes because there was a -- you know, a
11 different period at that time.

12 Now, that we know the end date, we put in that end date;
13 but other than that, it is essentially the changes that were
14 described by Mr. Rakesh.

15 **THE COURT:** Okay. So, football -- class 1 football
16 class and class 2 women's basketball class are still only P5?
17 They weren't expanded to D-I?

18 **MR. KESSLER:** That's correct because we dealt with the
19 D-I issues in the other classes. These classes are essentially
20 the same except for the cut-off date and adding new claims like
21 the pay-for-play claims.

22 **THE COURT:** Okay. Well, why was the other sports and
23 the injunctive relief, why were those expanded to D-I and not
24 just P5?

25 **MR. KESSLER:** Well, because we -- the second amended

1 complaint -- our original complaint did not assert claims for
2 all of D-I with respect to the first two classes at all; okay.

3 In the second amended complaint, we assert pay-for-play
4 claims on behalf of all of D-I.

5 We always had all of D-I in the injunctive class. That
6 has never changed.

7 **THE COURT:** Okay. Then it's just the other classes
8 that has changed, other sports. Why has that changed?

9 **MR. KESSLER:** Because we amended the second amended
10 complaint to add --

11 **THE COURT:** Right, I know it is consistent with the
12 second amended complaint; but I want to know why --

13 **MR. KESSLER:** We added in --

14 **THE COURT:** -- the complaint then, if that's the
15 reason.

16 **MR. KESSLER:** Yes. We added in claims for damages for
17 the pay-for-play claims for all of D-I as well as -- so it
18 covered the existing P5 class members, we had to expand it
19 to --

20 **THE COURT:** Okay.

21 **MR. KESSLER:** -- the other ones.

22 **THE COURT:** Okay. So -- and then as Mr. Berman points
23 out, there is a different difference in the end date.

24 One ends on September 15, 2024; and the earlier one ended
25 in something that I don't understand -- hopefully you will be

1 able to tell me -- when people were initially eligible to
2 compete.

3 What does it mean to be initially eligible to compete? Do
4 you get a letter, a piece of paper? What do you get? How do
5 you know you are initially eligible to compete? And how long
6 before you actually start playing games does that happen to
7 you?

8 **MR. KESSLER:** So, because of that uncertainty is why
9 we put in September 15th as an end date. In other words, what
10 that means -- what that means is that if by September 15th they
11 have joined a team and are eligible to compete on that team,
12 that they are in on that date.

13 We are essentially trying to identify the student athletes
14 who have joined the team, the NCAA certifies eligibility of
15 each member of the team. And so, they have been joined and
16 certified by that date.

17 **THE COURT:** Well, okay.

18 **MR. KILARU:** Your Honor, if I might just briefly add
19 on that, Mr. Kessler is right that the NCAA does this; and it's
20 a known quantity in a defined group of individuals because you
21 do get a document of certification and there is a record of
22 certification.

23 **THE COURT:** Is there a defined date that says "this is
24 the date upon which you were certified" --

25 **MR. KILARU:** Yes.

1 **THE COURT:** -- "as initially eligible to compete?"

2 There is a date certain because --

3 **MR. KILARU:** Yes.

4 **THE COURT:** -- if it is going to be a date potentially
5 of a class, it needs to be a date certain and not something
6 amorphous.

7 **MR. KILARU:** I apologize, Your Honor. For each
8 student there is a defined date, so students will know.

9 **THE COURT:** Then what's the magic number of
10 September 15, 2024? Is there a reason for that number being
11 changed too, instead of the other one?

12 **MR. KESSLER:** So, the --

13 **MR. KILARU:** Your Honor, I believe the earlier one was
14 tied to the date of class certification, so it wouldn't extend
15 forward in time. So, we thought this was a reasonable way to
16 have an end to the date and --

17 **THE COURT:** So, it was just built in as a date because
18 you needed a date to end things, which is fine. I'm not
19 criticizing. I'm just wondering.

20 **MR. KILARU:** I would say in part but it also has the
21 effect of applying to many student athletes in the '24-'25 year
22 because many of these decisions are made in the fall of 2024
23 before students come to campus, enroll or begin playing their
24 sport.

25 **MR. KESSLER:** Right. The goal, Your Honor, is when we

1 did the negotiation for the damages, for example, we were
2 including the damages that would occur in the start of the
3 '24-'25 academic year.

4 So, we needed to advance the date from the class
5 certification date of the litigated classes to now include
6 athletes who would start or be eligible by September 15th so
7 that their claims were included, and they will get damages
8 attributable to that year in the allocation formula.

9 **THE COURT:** Okay. Here is a random question that's
10 unconnected to anything else.

11 I'm looking for -- I know the date when the NCAA suspended
12 its third party NIL rules. And my question is -- that was July
13 of 2021. My question is: Did that also suspend the
14 prohibition on video game participation? Or does anybody know
15 or does anybody care?

16 **MR. KESSLER:** The same rules, Your Honor. The video
17 game participation was that you couldn't sell your NIL rights
18 for a video game. So, there is no difference between those
19 NIL. It's the same.

20 **THE COURT:** Okay, thank you. Excuse me. I need to
21 read my notes for a second.

22 (Pause in proceedings.)

23 **THE COURT:** Oh, when you are thinking about fixing the
24 notice form, if you look at the press release, the press
25 release actually -- I'm sorry to say -- does a slightly better

1 way of describing briefly and simply what the damages, what the
2 class, what the distribution are.

3 So, if you are trying to write something better than
4 "denied opportunities for compensation" or "lost
5 opportunities," you might take a look at how it is phrased in
6 the press releases.

7 **MR. BERMAN:** I think what we will do, Your Honor, is
8 we will take a first stab at it.

9 **THE COURT:** Okay.

10 **MR. BERMAN:** We will send you the Word documents
11 and -- in case you want to refine what we do.

12 **THE COURT:** Okay.

13 (Pause in proceedings.)

14 **THE COURT:** Oh, and then it always needs to say -- we
15 don't want to mislead anybody. There is places where it sort
16 of implies that you will get money. And everywhere anything
17 like that is said it needs to say "you may get money" because
18 nobody knows who will get money.

19 And many of the things are only -- are "if your school
20 chooses to offer them." So, it's not like everybody gets more
21 scholarships and everybody gets pay-for-play. No. Their
22 school has to offer them, and they need to understand it should
23 be -- and that should be clear to them as well as the ten-year
24 thing. It should always say that this will be paid out over
25 ten years because that's a substantial difference. Money now

1 versus money over a ten- year period is just a different number
2 and they need to know that and to know that attorneys' fees and
3 other costs will come out of it.

4 So, I just want at every turn for people to have certainly
5 an optimistic but also a realistic notion of what they are
6 going to get. Everybody is not going to get a million dollars.

7 (Pause in proceedings.)

8 **MR. BERMAN:** No, but we were trying to -- can I speak
9 to that real briefly, Your Honor?

10 **THE COURT:** Well, just -- yeah, I guess, go ahead.

11 **MR. BERMAN:** There are some people we want to say you
12 will get paid. So, if you are on a roster and you are getting
13 house broadcast NIL damages, you will get paid. We are mailing
14 checks. So we wanted people to know that.

15 **THE COURT:** Okay. Well, maybe you can make a
16 distinction then. This would be the non-claim form people.
17 So, you could say they will get a check automatically, and the
18 claim form people may get a check; and it may depend on whether
19 their school is offering.

20 (Pause in proceedings.)

21 **THE COURT:** Let's see, okay. So, let's turn to the
22 more substantive issues starting with the scholarship limits
23 claim.

24 I'm concerned about the argument by either some of the
25 objectors that there is no class representative who is making a

1 claim for a lost scholarship.

2 Plaintiff responds by saying that Mya Harrison never got a
3 scholarship and that Grant House got a partial scholarship.
4 However, those things are not in the complaint.

5 So, my question is: Do we need such a class rep? If we
6 do, do we have one? If we do, can we amend the complaint?

7 And this is one reason I haven't actually filed the second
8 amended complaint yet. Could we add -- if we need someone
9 else, add someone else in a third amended complaint? So, if
10 somebody can address that and then whoever else can respond.

11 **MR. BERMAN:** We can do it one of two ways, Your Honor.

12 **MR. KESSLER:** Your Honor -- go ahead.

13 **THE COURT:** Let's start with Mr. Berman. Go ahead.

14 **MR. BERMAN:** We can do it one of two ways. We could
15 put that information in the complaint. I was wondering why you
16 hadn't entered that stipulation.

17 Or we could file a declaration from those class
18 representatives attesting to the fact that they either had a
19 partial scholarship or no scholarship.

20 **THE COURT:** Well, if you can and don't mind, I think
21 the cleanest way would be to amend the complaint.

22 **MR. BERMAN:** No problem. We will do it.

23 **THE COURT:** Does anybody have a problem with that?

24 **MR. BROSHUIS:** Your Honor, if I can just speak to that
25 for a moment, I don't know that that would even -- that would

1 still cure the problem.

2 And the reason is that our case is beyond -- on behalf of
3 people who are injured by partial scholarship rules. And the
4 class is defined by those who got partial scholarships.

5 If they are saying that Ms. Harrison did not receive a
6 scholarship at all, she would not be in our class. And I don't
7 know that she would have standing even with the amendment.

8 **THE COURT:** What about Grant House?

9 **MR. BROSHUIS:** And with Mr. House they are saying that
10 he received a partial scholarship but then received the rest of
11 his scholarship through academic scholarship then.

12 And so, I still don't know that he suffered an injury then
13 because they are saying he received a full scholarship.

14 **THE COURT:** Okay. Well, if you are worried about it,
15 Mr. Berman, maybe another thought would be to find another
16 Plaintiff to add who did not get a scholarship and one who got
17 a partial scholarship.

18 **MR. BERMAN:** I will take that into account,
19 Your Honor.

20 **THE COURT:** Okay. Let's see.

21 (Pause in proceedings.)

22 **THE COURT:** Or you could just not add that claim. I
23 don't suppose that's appealing, but that would be another way
24 around it.

25 (Pause in proceedings.)

1 **MR. BROSHUIS:** Which is what we would prefer
2 obviously, Your Honor.

3 **MR. KILARU:** That would be a problem for us,
4 Your Honor.

5 **THE COURT:** Okay. The problem -- as long as we are on
6 the scholarships, there's that sort of technical problem with
7 the Plaintiffs; but in addition to that, there are complaints
8 that the full scholarships or the partial -- or even the
9 partial scholarships are not being compensated adequately.

10 So, if I could get somebody on the Plaintiffs' side to
11 explain or maybe this would be a good job for -- I'm sorry, I
12 have forgotten how to pronounce it again already -- Kilararoo
13 (phonetic) or Kilaru?

14 **MR. KILARU:** Kilaru. Thanks, Your Honor.

15 **THE COURT:** Maybe you would be the one to say why it
16 is that the -- apart from the issue of class representation,
17 the scholarship limit or partial scholarship availability is --
18 is not a valuable claim or not a lot more valuable than what is
19 reflected in the proposed settlement.

20 **MR. KILARU:** Sure, I'm happy to do that, Your Honor.

21 We think that the settlement does provide consideration
22 for those claims and that the additional compensation claim
23 settlement amount, the \$600 million, includes scholarship
24 claims.

25 The history on those claims is quite clear. They have

1 failed every single time they have been litigated.

2 They failed at the motion to dismiss in the *Agnew* case.

3 They failed at the class certification stage in the walk-on
4 case and the *Rock* case. And there is really no reason to think
5 that the claims would be any different here.

6 In fact, the claims are even weaker in this sense because
7 they are brought whether in this case or the Colorado case on
8 behalf of all Division I athletes as opposed to the narrower
9 group of football players in the walk-on case.

10 So, we have even more of the conflicts and impossibilities
11 of predicting in this context than you did there.

12 So, we don't think that these claims had -- we think that
13 these claims would have failed on the merits. But, as I think
14 the Plaintiffs have pointed out in their briefs, there is some
15 consideration being provided for these claims because they are
16 just part of the additional compensation that would have been
17 received in the but-for world that they alleged.

18 **THE COURT:** Okay. Mr. Broshuis, do you want to
19 respond to that?

20 **MR. BROSHUIS:** Yes, and I would like to respond both
21 in the matter of substance and the matter of process.

22 For a matter of substance, we fundamentally disagree with
23 what Mr. Kilaru just said because these are viable claims.

24 These claims have never been litigated. When we are
25 talking about the walk-on case, the *Agnew* case, we are talking

1 about walk-on football players.

2 Football player cases are different than partial
3 scholarship cases, and they are also litigated -- in some
4 instances the walk-on football player case was litigated 20
5 years ago, and things have obviously changed then from a
6 litigation standpoint, an NCAA liability standpoint since then.

7 And, you know, it is not that -- two of these cases, they
8 didn't fail on the merits. They didn't fail at the motion to
9 dismiss stage. It's that class certification was not granted.

10 In fact, Your Honor distinguished those cases on class
11 certification; and they have been criticized by other cases as
12 well.

13 So, we do think that they are strong cases on class
14 certification. We have evaluated these cases for years. It is
15 not like we just threw these together.

16 These personally affected me. I'm a former All American
17 baseball player who was on a partial scholarship. This is a
18 problem that is rampant in baseball and that every head
19 baseball coach out there complains about and has complained
20 about for a number of years.

21 And, in fact, the Movants said in their opening brief that
22 these had astronomical value when it comes to the injunctive
23 relief portion of the case.

24 But they didn't even try to value the claims when it came
25 from a damages standpoint. They say that they are baked into

1 the \$600 million; but it's very telling, Your Honor, that
2 Dr. Rascher's declarations, neither of them mention these
3 claims because he, in fact, did not do these calculations; and
4 he wouldn't do them in the fashion that they are suggesting.

5 No economist would do them in this fashion. This is just
6 a post hoc argumentation provided by attorneys whenever they
7 weren't actually valued at all.

8 On an individual -- just on an individual level, you know,
9 we had an economist provide preliminary estimates of this and
10 said it is over \$300 million.

11 Look at it just on an individual level. Mr. Cornelio was
12 the number one recruit coming out of the State of Colorado in
13 baseball.

14 **THE COURT:** No, we don't have time for that. Just
15 tell me your legal views and then we will move on.

16 **MR. BROSHUIS:** I'm explaining why they are valuable
17 because he provided -- he was provided a portion of a
18 scholarship. And so, he ended up paying to work at TCU and it
19 results in probably a six-figure claim for him.

20 Now, he is -- and there is a lot of other people who have
21 six-figure claims for these partial scholarship claims; and
22 most of these people are only going to get 50 to a hundred
23 dollars in total out of this settlement.

24 **THE COURT:** Okay. You also wanted to talk about --

25 **MR. BROSHUIS:** That's if --

1 **THE COURT:** Excuse me. You said you also wanted to
2 talk about the procedural issues. You can have a couple more
3 minutes to add that, and then I will turn to one of the
4 Plaintiffs' attorneys if they have any reply. Go ahead.

5 **MR. BROSHUIS:** Thank you, Your Honor.

6 So, as a matter of process, these claims were not
7 litigated in this case. They are fundamentally different from
8 what was being litigated in this case, and the cases -- and
9 other cases confirm that when counsel had no interest in
10 litigating these cases --

11 **THE COURT:** No. I thought you were going to talk
12 about adding a new class rep or --

13 **MR. BROSHUIS:** Well, I'm talking about the fundamental
14 problem of lack of --

15 **THE COURT:** It doesn't help you to interrupt me
16 because the person who is speaking has a little green box, and
17 I won't hear what you say if I have my little green box.

18 So, what I thought you meant when you talked about
19 procedural issues was that you were going to respond on the
20 issue of a class rep and whether allegations had to be in the
21 complaint and so on.

22 So, if that's not it, we will move onto Mr. -- one of the
23 Plaintiffs' attorneys and then move onto another subject.

24 Mr. Berman, Mr. Kessler, does either of you want to add
25 anything to --

1 **MR. BERMAN:** I would add the following --

2 **THE COURT:** Okay.

3 **MR. BERMAN:** -- these claims, these scholarship
4 claims, might be good claims for an individual; but they cannot
5 be certified. I tried it four times; okay. I have lost it
6 four times. And here is the simple reason, which we evaluated,
7 you cannot redo who would have gotten a scholarship.

8 Let's say that Berkeley had eight rowing scholarships
9 instead of four. How would you decide who would have gotten
10 the other four? It could have been some high schooler who
11 didn't go to Berkeley because there were no scholarships. It
12 could have been someone at Berkeley who, "Oh, if I had known I
13 could have got a scholarship for rowing, I would have been on
14 the rowing team." You can't certify it.

15 So, any individual who wants to bring a claim can bring
16 the claim. So we value the claim at basically nothing on a
17 class basis; right. And counsel valued it at nothing.

18 Those claims have been out there for ten years. If there
19 was a \$300 million case sitting out there, I guarantee you the
20 Plaintiffs' antitrust bar would not have let it sit out there.

21 And all of the sudden we settle it, the next day he files
22 it. That speaks volumes to the value of that claim and the
23 class basis.

24 **THE COURT:** Okay. So, I don't know where this fits
25 in, in any sort of logical order; but I -- while we have got

1 Mr. Broshuis here, I wanted to raise one other issue.

2 A number of the objectors besides the Fontenot objectors
3 had issues about releases of other claims; and those were the
4 Choh release, the Johnson release, the FLSA release -- the
5 Federal Labor Standards Act wage and hour type claims -- other
6 labor claims and Title IX.

7 We got a brief from you, I think -- well, from the
8 Plaintiffs saying that certain of those were not released; and
9 then we got some revised notices that said certain of those
10 were not released; but they haven't all been addressed.

11 And I wondered if you can address all of them. And if you
12 are looking quizzical, it is the Title IX that wasn't
13 addressed.

14 If you would tell me whether you can give me -- well,
15 whether this change of the notice is adequate, whether the
16 claim in the brief -- and I will say Defendant supported it --
17 is adequate or whether we should have an addendum to the
18 settlement agreement that would specifically state all those
19 things.

20 So, if you could address that for me briefly, I would
21 appreciate it.

22 **MR. KESSLER:** Plaintiffs or Defendant, Your Honor?
23 Who should address it, Plaintiff?

24 **THE COURT:** Mr. Kessler or Mr. Berman.

25 **MR. KESSLER:** I will address it, Your Honor.

1 **THE COURT:** That's fine. Between you and Mr. Berman,
2 I don't know who is on what subject.

3 **MR. KESSLER:** I'm doing releases. So, all of these
4 issues have been addressed.

5 With respect to Choh and the IME claim, the parties have
6 agreed (inaudible). Choh Defendants actually withdrew their
7 objection because --

8 **THE COURT:** I know. That's not what I'm asking. I
9 saw that, yeah.

10 **MR. KESSLER:** So they agree to that.

11 **THE COURT:** Yeah.

12 **MR. KESSLER:** With respect to the Johnson and any
13 label --

14 **THE COURT:** Were both mentioned in the notice. But
15 actually even with them -- even -- I mean, maybe I'm being
16 overly cautious -- but even with them, I just wonder whether it
17 wouldn't be safer to have it in the settlement agreement
18 addendum. But, go ahead.

19 **MR. KESSLER:** Okay. So, we will do whatever
20 Your Honor wants obviously, but there is no disagreement
21 between Defendants and Plaintiffs that the Johnson cases and
22 all the label law claims are not covered by the releases.

23 There is no -- there is no release of future damages
24 claims because of the way the damages are defined. That's
25 already in the settlement agreement.

1 In other words, a cut-off with a damages class is final
2 approval. So there is no release of damages claims for any
3 conduct after final approval.

4 There is also no members of the damages class after
5 September 15th if they start as a student in the future. So
6 there are no release of that. That's already in the settlement
7 agreement.

8 With respect to Title IX, there is no disagreement about
9 this and it has to do with the release language. The release
10 language is of NCAA rules.

11 NCAA rules cannot be a Title IX violation. What could be
12 a Title IX violation is the decisions by individual schools as
13 to how or not they pay out future benefits or money so there's
14 nothing that releases that at all in the agreement at all.

15 There is no release of any individual school conduct for
16 anything in the current releases or settlement agreement. So,
17 Title IX is completely preserved.

18 **THE COURT:** Okay. Can you say that in an addendum to
19 the settlement agreement along with the other things you just
20 mentioned?

21 **MR. KESSLER:** Again, we will have to get -- Defendants
22 have to agree too. We are happy to make it an addendum that
23 way.

24 **THE COURT:** What do you say, Mr. Kilaru?

25 **MR. KILARU:** I'm not sure I agree with it precisely as

1 Mr. Kessler put it. There are release provisions that apply to
2 individual institutions for the claims that we discussed.

3 But if the question is as relates to future Title IX
4 liability, that's not something we are releasing through the
5 settlement.

6 **THE COURT:** Okay. Well, why don't you get together
7 and see if you can work out some wording that will make the
8 objectors comfortable and that each of you can agree with. I
9 don't think there is any substantive dispute here.

10 **MR. KILARU:** We don't either, Your Honor.

11 **THE COURT:** It is just finding the right words and
12 putting them in the right place.

13 (Pause in proceedings.)

14 **THE COURT:** So, did you want to address that,
15 Mr. Broshuis?

16 **MR. BROSHUIS:** Your Honor, I don't know that I'm best
17 positioned to do so since we didn't raise any Title IX issues.
18 It might be better for Mr. Molo to actually address more of
19 the --

20 **THE COURT:** Oh, that's right. I'm sorry. I meant
21 Mr. Molo. Yeah, go ahead. Sorry.

22 **MR. MOLO:** Good afternoon, Judge. I'm Steve Molo and
23 I'm not a former college All American baseball player. I'm
24 happy to be here, and I want you to know we come here in good
25 faith.

1 Our concerns are legitimate concerns that we have
2 expressed on behalf of our clients, and we are -- all women.
3 And I want to thank the parties for the work that they have
4 done and congratulate them and the Court to get to this point.
5 It is not enough as far as we are concerned.

6 To be clear, we are not raising a specific Title IX claim
7 here. We are saying that the conduct that the NCAA and the
8 Defendants engaged in was discriminatory to women and had an
9 anticompetitive effect, and that's alleged in the second
10 amended complaint.

11 Specifically, there are allegations of the NIL rules
12 adversely impacted female athletes more than their male
13 counterparts. The impact of restraints on female athletes is
14 farther -- further exacerbated by the NCAA's unequal treatment
15 of female athletes.

16 So, our concern is that this conduct -- anticompetitive
17 conduct, which had an overly powerful effect on women, which is
18 set forth in the complaint, isn't fairly compensated in the
19 settlement. And we can go through that --

20 **THE COURT:** Evidence as to the reason that it all
21 turned out that way is because of the revenue producing
22 aspects, which, I agree, are based on history -- past
23 discrimination against women; but when you are thinking about
24 damages for past conduct, all you can give is damages for the
25 liability and not for other things.

1 **MR. MOLO:** I understand what you are saying, Judge,
2 but the problem is -- and I have a couple slides I could put up
3 if that's okay.

4 **THE COURT:** No.

5 **MR. MOLO:** Okay, then I won't. All right. But the
6 problem is this: The conduct that they engaged in is not
7 really accounted for -- the recent conduct is not really
8 accounted for in the expert's analysis.

9 Let me give you a very good concrete example that's set
10 forth in our brief.

11 **THE COURT:** It has to be an antitrust violation. This
12 case is an anti --

13 **MR. MOLO:** I'm talking about antitrust violation.

14 **THE COURT:** Okay.

15 **MR. MOLO:** The part --

16 **THE COURT:** Point me to it because I have read your
17 brief a couple of times.

18 **MR. MOLO:** Okay. The NCAA commissioned a study by a
19 law firm Kaplan Hecker & Fink, well regarded firm. They
20 produced a two volume report, which indicated that it was about
21 gender equity in sports; okay. We cite that in our brief as
22 well, and I can send the Court copies of it if you wish as well
23 as the other parties.

24 They clearly found that there was, you know, unequal or
25 inequitable spending, and they go through this whole series of

1 examples where the NCAA failed to promote -- the
2 anticompetitive conduct that they engaged in for women was much
3 more egregious than for men. They failed to promote women's
4 sports.

5 So, for example, the -- the branding of March Madness --
6 which we all, you know, are well aware of and is very, very
7 valuable and has been identified as such -- up until 2022,
8 women could not use March Madness. They were -- they asked for
9 the opportunity numerous times, and they were denied that
10 opportunity. In 2022 they were allowed to do that. The -- to
11 market under March Madness.

12 This year they went from 4 million viewers in 19 -- I'm
13 sorry -- in 2021 for their final game to over 18 million this
14 year. It was the highest ranked game. It outstripped men.

15 But-for that conduct women would have had historically
16 more revenue, more information that could be used by an expert.

17 And an expert could look at this conduct, look at what's
18 happened more recently, and conclude that, yes, but-for that
19 conduct, these people would have earned that much more money --
20 women would have earned that much more money; and they are
21 being denied that as a result of the way the settlement is
22 structured.

23 **THE COURT:** Well, okay. You were worried about FLSA
24 as well, the wage and hour claims, and maybe about the labor
25 claims or other claims. Are you satisfied with the carve-out

1 that counsel is going to come up with the rest of those things?

2 **MR. MOLO:** It clearly needs to be in the release and
3 not just in the notice. So, an addendum to the settlement
4 agreement is fine; but it has got to be in the release because
5 the notice isn't a release.

6 **THE COURT:** What do you mean a release?

7 **MR. MOLO:** If they are saying they are carving claims
8 out, they need to specify that; and they can't just say, "We
9 didn't mean that" or "it is in the notice and it says that."
10 They have got to clearly --

11 **THE COURT:** It has to be in the settlement agreement,
12 so, yeah.

13 **MR. MOLO:** Right.

14 **THE COURT:** Did you want to -- Mr. Kessler or
15 Mr. Berman, want to respond on the Title IX issue? Maybe it's
16 not a Title IV issue. Maybe it's a sex discrimination issue.

17 **MR. KESSLER:** Yes, Your Honor. I'm deeply sympathetic
18 to sex discrimination claims. That's not what our damages
19 address. That's not what our antitrust claims address. It is
20 not an antitrust violation to engage in sex discrimination. It
21 may violate Title IX or some other discrimination law, none of
22 which are released.

23 And so, if there are damages claims for that, they should
24 be asserted by someone in some other forum. But, as Your Honor
25 pointed out, these antitrust claims are based on what

1 compensation athletes would have got based on the revenues they
2 generated.

3 And, unfortunately, the revenues were mostly generated by
4 male sports -- maybe because of sex discrimination -- but when
5 we are looking at past damages for an antitrust case, we have
6 to follow the money; and that's what our experts did, and I
7 think that's the only thing we could do.

8 I can't be a social policy advocate and, you know,
9 rejigger the damages to right a sex discrimination wrong. If
10 the law does that, they need to bring a claim for that
11 somewhere else.

12 **MR. BERMAN:** There is another reason -- excuse me,
13 Your Honor. I drafted those allegations that Mr. Molo was
14 referring to because my client -- our client, Sedona Prince, is
15 the one who outed the NCAA during a tournament when they shoved
16 the female athletes into a closet they turned into a weight
17 room, and the male athletes had this beautiful weight room and
18 it went viral. So, we were very attune to the discrimination.

19 And so, I put those allegations in hoping that I might be
20 able to come up with a claim; but it turns out I can't because
21 Title IX doesn't apply to the NCAA. It doesn't apply to the
22 conferences.

23 So, we couldn't do anything about it. We had to focus on
24 our antitrust claims. Doesn't mean we like it, but that's
25 just -- that's the law.

THE COURT: Okay.

MR. MOLO: May I respond briefly?

(No response.)

MR. MOLO: May I respond briefly?

THE COURT: Okay.

MR. MOLO: Just because something violates Title IX doesn't mean that it's not anticompetitive conduct that the NCAA had, just like the rules that had been challenged in this case.

So, the fact that it also may be discriminatory based on sex doesn't mean that it is anticompetitive conduct and subject to a remedy. And so, I think that addresses Mr. Berman's claim.

The other thing I want to point out is that there are the settlements focused on revenue generating sports, football and basketball, also ignores the fact that the schools literally could not have the revenue of football and basketball without these non-revenue generating sports, which are mostly sports played by women.

The NCAA rules require schools to have as many as 16 teams in order to have a football and basketball team.

So, if you are a rower, if you are a swimmer, if you are a gymnast and you are putting in time for your school, that time is necessary for there to be revenue in basketball and football under the NCAA rules. And that's completely ignored here.

1 There is no compensation -- or no analysis done for that.

2 And one other thing Mr. Berman said about the Title IX not
3 applying to the conferences, I disagree with that. It clearly
4 applies to the schools. I know there has been Court opinion --

5 **THE COURT:** No, not the schools. What he said was it
6 doesn't apply to the NCAA or to the conferences. And, as far
7 as I know, that's correct.

8 **MR. MOLO:** Right, I think as to the NCAA; but I
9 believe as to the conferences, there is at least some dispute
10 about that.

11 **THE COURT:** Not that I know of but maybe. Okay.
12 Let's move on to pay-for-play damages.

13 I don't know if I can get an answer to this, and I suppose
14 it doesn't really matter and time is running out. I was just
15 so curious.

16 From the *Fontenot* claim, you had a paragraph that talked
17 about pay-for-play damages due to the earlier filing, 2020, of
18 *House* than *Fontenot*, the damages start at 2019; but the other
19 *House* claims start in 2016.

20 The *Fontenot* claims are undervalued such that Plaintiffs
21 with and without *Fontenot* claims are treated differently.

22 What do you mean by "with or without *Fontenot* claims?"
23 Who is with and who is without?

24 **MR. BROSHUIS:** Yeah, Your Honor, so, because *Fontenot*
25 was not filed until 2023, the statute of limitations only goes

1 back to 2019. Whereas, because *House* was filed in 2020, the
2 statute of limitations goes back to 2016.

3 So, there are some class members that only have *House*
4 claims and do not have fair pay claims. And Dr. Rascher --

5 **THE COURT:** Why would that be?

6 **MR. BROSHUIS:** Because of the statute of limitations
7 purposes. So if you played --

8 **THE COURT:** But there --

9 **MR. BROSHUIS:** If you played from 2014 to 2018 --

10 **THE COURT:** -- more people in it.

11 **MR. BROSHUIS:** Sorry, I didn't quite catch that, Your
12 Honor.

13 **THE COURT:** *House* was filed earlier. So, the statute
14 of limitations would mean there would be more people in the
15 *House* class than there would be in the case that was filed
16 later. That's what I don't get.

17 **MR. BROSHUIS:** Correct. So some of those members of
18 *House* do not have fair pay claims.

19 **THE COURT:** Why not?

20 **MR. BROSHUIS:** Let's say, for instance --

21 **THE COURT:** What?

22 **MR. BROSHUIS:** Let's say, for instance, an athlete
23 played from 2014 to 2018, then because of statute of
24 limitations purposes, they have *House*, broadcast NIL claims;
25 but they do not have *Fontenot* claims.

THE COURT: Because they have graduated and quit playing.

MR. BROSHUIS: Correct. So, the statute of limitations means that their claims have expired.

THE COURT: I see. I thought you were talking about claims -- when the claims started, but you are talking about when they expired.

So, you are talking about people with *Fontenot* claims are people whose claims have not yet expired; and people without *Fontenot* claims are people whose claims have expired. Is that the size of it?

MR. BROSHUIS: People without *Fontenot* claims would, yes, be those that have broadcast NIL claims, the claims being litigated here; but their fair pay claims had expired because there was no fair pay or pay-for-play case on file until 2023.

THE COURT: Okay.

MR. BROSHUIS: That's why there are two different subgroups of people; some with those claims, some without.

(Pause in proceedings.)

THE COURT: Okay. I guess I don't have much more on pay-for-play. We have an argument that it's not enough, but that's the sort of, everybody thinks they can do better getting more money than the other guy got.

So, I'm not -- I don't have any questions about that claim. I understand it. I do want to talk about the future

1 class members about the injunctive relief claims but...

2 (Pause in proceedings.)

3 **THE COURT:** Let me ask the Plaintiffs: Do you see a
4 problem with the settlement favoring athletes who played in
5 higher revenue sports? Is there anything --

6 **MR. KESSLER:** Are we talking about the injunction,
7 Your Honor, or the damages because they are two different
8 issues. What is your question about now?

9 **THE COURT:** The damages.

10 **MR. KESSLER:** Okay. So the damages, we don't believe
11 it favors that. It applies a neutral expert methodology, which
12 traces what would be paid to these athletes in the competitive
13 market in the but-for world without the restraints; and the
14 economists have determined it would be a function of the
15 revenues that their individual sports generate.

16 So, we don't think it's biased to hire paid athletes. It
17 applies a neutral formula. And, in fact, we cited this in our
18 brief; that the Ninth Circuit has indicated you are required as
19 class counsel when you are doing allocations to have neutral
20 formulas that may favor some class members over the others
21 because the neutral formula indicates some suffered more
22 injury.

23 So, I don't think there is anybody who could look at this
24 as an economist and not say, for example, that football players
25 who generate much more money than a rower would get more

1 compensation than a rower in a competitive market.

2 I mean, it's the only neutral economic principle you could
3 apply in an antitrust case. So, I don't think there is any
4 problem with it. I think it is required actually for us to be
5 fair to all the class members.

6 **THE COURT:** Okay, let's talk about the damages case
7 versus the injunctive relief case, the present class members
8 versus future class members.

9 Can the Plaintiffs represent future class members? Do the
10 future class members need representation by a class rep and
11 also, for that matter, by an unconflicted attorney?

12 **MR. BERMAN:** And the answer to that is under Ninth
13 Circuit law, no, Your Honor.

14 So, we were very aware of the situation from the get-go.
15 We understood that some lawyer trying to get into this case
16 would look at the Second Circuit and claim the Second Circuit
17 says you have to have separate counsel.

18 The Second Circuit does not say that. The Second Circuit
19 says you have got to look at the facts and see is there some
20 indicia that maybe there was a conflict.

21 And in those two cases -- the *Payment* case and the
22 *Literary* case -- there was an indicia that counsel had traded
23 off.

24 **THE COURT:** You are not quite as loud as everybody
25 else. Can you lean forward or pull your mic closer to you?

1 **MR. BERMAN:** So, in those cases there were indicia of
2 a tradeoff; okay. So, we went into this case and at the very
3 first session we told the Defendants and the mediator, "We have
4 to negotiate the injunction first and we will not talk about
5 anything else until the injunction is finished." And that's
6 what happened.

7 **THE COURT:** Okay. I appreciate it, but what I want to
8 ask is: Is there any authority for the proposition that that
9 solution solves the problem?

10 **MR. BERMAN:** Yes, the *Volkswagen* case.

11 **THE COURT:** Okay.

12 **MR. BERMAN:** I was in that case. We had people with
13 claims of different values, and the Ninth Circuit said that's
14 not a problem.

15 **THE COURT:** Okay. How did you distinguish *Payment*
16 *Card* and *Ortiz* or even *Literary* from --

17 **MR. BERMAN:** In the Ninth Circuit the Court seemed to
18 say you have to show a serious conflict. In those two cases --

19 **THE COURT:** Wait. In the Ninth Circuit?

20 **MR. BERMAN:** Yeah.

21 **THE COURT:** Which case are you talking about?

22 **MR. BERMAN:** I will pull it up.

23 **THE COURT:** Is it a Ninth Circuit case -- *Ortiz* and
24 *Payment Card* and *Literary* are all Second Circuit cases.

25 **MR. BERMAN:** Yes, yes, but I don't think the Ninth

1 Circuit has adopted the *Payment Card* standard.

2 **THE COURT:** Oh, I see what you are saying. Okay.

3 Well --

4 **MR. BERMAN:** Look at --

5 **THE COURT:** -- can you distinguish any of those cases?

6 **MR. BERMAN:** Yes. In those cases there was some
7 tradeoff where you had one group trading off the strength of
8 their case at the expense of another group.

9 We have the opposite here. In the injunction case we had
10 a home-run; okay. If you had said -- if I had said to you at
11 the beginning of this case, "We are going to get a revenue
12 sharing model of 50 percent," you would have said you're crazy.

13 And in the room that day when we floated the idea of
14 revenue sharing -- both for compensation and for NIL, and the
15 Defendants said that might be a good solution -- I mean, I
16 think Jeff and I fell off our chairs, literally.

17 I was so surprised that when I got out of my Uber, I left
18 my luggage on the curb because it was such a shocking
19 development.

20 So, what more could -- we got a 50 percent revenue share.
21 That's a home-run. So, there is no indicia of any conflict
22 with respect to the injunction class.

23 Then you look at the damages class. We hit home-runs
24 again.

25 **THE COURT:** Well, before you go onto that, tell me

1 about the class rep for the injunctive class, the future class
2 members, the 6-year-old who is playing kickball on the asphalt.

3 (No response.)

4 **THE COURT:** I'm still green but I stopped talking.

5 **MR. BERMAN:** I'm sorry. So, the six-year-old, okay --

6 **THE COURT:** That was a joke. I just want to know
7 similar to the scholarship claim, whether we need -- whether we
8 have -- perhaps in Sedona Prince -- or whether we need or
9 whether we don't need anyway a class rep for future players.

10 **MR. BERMAN:** Well, Sedona is currently still a
11 student.

12 **THE COURT:** I know.

13 **MR. BERMAN:** Okay. And so what we contemplate --

14 **THE COURT:** The case is going to last longer than
15 that.

16 **MR. BERMAN:** That's right, and what we contemplate is
17 that each year we will add a new class rep.

18 **THE COURT:** What about now?

19 **MR. BERMAN:** Well, now we don't need one.

20 **THE COURT:** Pardon?

21 **MR. BERMAN:** We don't need one now.

22 **THE COURT:** Oh, because of Ms. Prince.

23 **MR. BERMAN:** Ms. Prince, okay, and then the next
24 season, okay -- the way we envision this is -- and I got this
25 idea because I was a college athlete -- and you get a --

1 **THE COURT:** What sport?

2 **MR. BERMAN:** Soccer. And you get a notice from the
3 NCAA in the summer. It's your notice of eligibility. When I
4 played, it came from Shawnee, Kansas. And you open it up and
5 you sign your papers and then you are eligible.

6 So, the class notice is going to go into -- going forward
7 every year an athlete will get that class notice and have the
8 opportunity -- if they didn't previously have the
9 opportunity -- to object to the (b) (2) part.

10 For the (b) (3) part, there is no release of that sixth
11 grader. That sixth grader could bring a lawsuit for class
12 action damages. There is no bar.

13 **THE COURT:** Oh, they could bring a class action?

14 **MR. BERMAN:** Absolutely, for damages.

15 **THE COURT:** Can they have the attorney of their choice
16 or do they have to have you?

17 **MR. BERMAN:** No, they don't have -- I might not even
18 be around then. Who knows. They can --

19 **THE COURT:** They can pick the attorney of their
20 choice?

21 **MR. BERMAN:** They can do it with the attorney of their
22 choice.

23 **THE COURT:** Do they have to come to me in the Northern
24 District of California?

25 **MR. BERMAN:** They do -- I have to look that up. I

1 think they do.

2 **THE COURT:** They do?

3 **MR. BERMAN:** Yes.

4 **MR. KESSLER:** No. Your Honor, if they asserted -- if
5 they asserted a separate antitrust claim for future conduct,
6 they could choose their attorney and choose their forum.

7 Now, someone may move to transfer and say if a court is
8 familiar with these claims, but that's a whole different issue.

9 **THE COURT:** What if it's for damages?

10 **MR. KESSLER:** Damages are not released at all for the
11 future.

12 **THE COURT:** Right. Can they bring a damage claim with
13 their own attorney in a court of their choice?

14 **MR. KESSLER:** Yes.

15 **MR. BERMAN:** Yes.

16 **THE COURT:** Yes?

17 **MR. KESSLER:** Yes.

18 **MR. BERMAN:** Yes.

19 **MR. KESSLER:** And, Your Honor, Mya Harrison is another
20 current athlete in addition to Ms. Prince.

21 So, we have two current representatives with standing. We
22 have two regarding the future injunction.

23 **THE COURT:** There is something in there -- and now I
24 can't swear what it is -- but there is something in there that
25 requires somebody to bring some kind of claim in the Northern

1 District of California. Maybe it's not antitrust damage claim.
2 Maybe it is an antitrust injunction claim. I don't remember
3 what it is, but there is something like that in there. And
4 what is it and is it okay or does anyone else remember?

5 **MR. KILARU:** Your Honor, I believe that --

6 **MR. KESSLER:** Well, I --

7 **MR. KILARU:** If you want to go ahead, Mr. Kessler
8 that's fine.

9 **MR. KESSLER:** You can go, please.

10 **MR. KILARU:** I believe that what the settlement
11 agreement says is that if anyone is challenging the settlement
12 agreement of the injunctive settlement, they have to go to the
13 Northern District of California, which makes sense because
14 that's the court that will be presiding over the injunction.

15 I think in the hypothetical scenario that was discussed of
16 damages claims, I believe that we and the Plaintiffs may move
17 to transfer the case to the Northern District of California;
18 but I don't think there is an obligation to file it there.

19 **THE COURT:** What if the person wasn't suing about
20 the -- your antitrust settlement but was instead saying since
21 then, NCAA has come up with new antitrust violations and I want
22 to sue on those that are not the old ones, they are new ones
23 they just started doing recently? Can they do that?

24 **MR. KILARU:** Yeah. I don't think those claims would
25 have merit, and you could (inaudible) position; but if that's

1 their claim, they can bring that claim. We would have the
2 right, of course, to try to transfer that just as you can
3 always transfer related cases implicating same -- similar
4 issues.

5 THE COURT: Right, okay.

6 **MR. KESSLER:** There is nothing in the agreement that
7 says such a claim has to be in this court or such a claim has
8 to be by any particular counsel. It's all just a normal
9 situation. They are unreleased claims that someone can bring
10 anywhere they like in the United States, and then it moves from
11 there.

12 THE COURT: Did you have something, Mr. Berman?

13 **MR. BERMAN:** Paragraph 46 that you recall in case you
14 want to read it again and it relates to someone challenging
15 compliance with the terms of the injunction.

16 (Pause in proceedings.)

17 **THE COURT:** Okay. Okay. So, Mr. -- let's see,
18 Mr. Broshuis, did you want to address this future injunction --
19 future injunctive relief class issue?

20 **MR. BROSHUIS:** Yeah, and I want to go back to the
21 *Volkswagen* case that Mr. Berman mentioned because it doesn't
22 actually speak to potential conflicts between injunctive relief
23 class and damages class. It contains some dicta about
24 conflicts and stuff, but then the issue there was purchasers of
25 Volkswagens; and it doesn't speak to injunctive relief.

1 **THE COURT:** To damages, the people who had the old
2 cars and the people who had the new cars. I know.

3 **MR. BROSHUIS:** So, it doesn't speak to the injunctive
4 relief versus damages issue. So, we think the Second Circuit
5 is still instructive on that.

6 **THE COURT:** Then why is this case like those three
7 cases?

8 **MR. BROSHUIS:** Your Honor, there are a few reasons
9 that this is like that and one is --

10 **THE COURT:** And what is the case?

11 **MR. BROSHUIS:** Sorry, what was that?

12 **THE COURT:** Point me to the case.

13 **MR. BROSHUIS:** Yes. So, *Ortiz*, for instance, you had
14 people that had some claims that were before an important
15 insurance agreement and some that were after an important
16 insurance agreement; and we think *Ortiz* speaks more to our
17 *Fontenot* claims because there are some class members that have
18 *Fontenot* claims for the reasons --

19 **THE COURT:** Can you refresh pay-for-play claims so I
20 know what they are?

21 **MR. BROSHUIS:** Sure. I don't like pay for play
22 because --

23 **THE COURT:** Nobody does but it's shorter and it has a
24 little ring to it.

25 **MR. BROSHUIS:** Can I call them "fair play" instead

1 because that's what I like calling them? But we can call them
2 pay-for-play.

3 **THE COURT:** Sure.

4 **MR. BROSHUIS:** Some class members have pay-for-play.
5 Others don't have pay-for-play. And so that's why we think
6 *Ortiz* really speaks to the *Fontenot* claims.

7 Now, the *Visa* and *Mastercard* case, what you have there is
8 you had a situation where the same --

9 **THE COURT:** What did you say about *Ortiz*?

10 **MR. BROSHUIS:** So *Ortiz*, what it had to do with is you
11 had some people who had claims that predated an important
12 insurance agreement.

13 **THE COURT:** Oh, yeah.

14 **MR. BROSHUIS:** Others that didn't.

15 **THE COURT:** Right.

16 **MR. BROSHUIS:** So, that's why we think that's akin to
17 the situation that's going on with the pay-for-play claims
18 because some class members have those claims.

19 **THE COURT:** Well, because some --

20 **MR. BROSHUIS:** What's that?

21 **THE COURT:** Because some of your people's claims have
22 expired?

23 **MR. BROSHUIS:** Because some people don't have those
24 claims. You have two subgroups of class members.

25 **THE COURT:** They expired.

1 **MR. BROSHUIS:** Yeah. Some don't have them and some
2 do, and they weren't being litigated in this case.

3 And so what *Ortiz's* progeny -- and there is a Third
4 Circuit case called *In Re: Community Bank* that we cited
5 multiple times that wasn't distinguished on reply.

6 There is also the *Gonzalez* case in the Eastern District of
7 California that addresses this that they didn't address in
8 their reply.

9 And both of those cases say that in that type of
10 situation, when you have claims that weren't being litigated
11 and there are additional claims being released that only some
12 class members might have you, should have separate counsel to
13 represent the people with those claims.

14 Now, their answer to all of that is supposed
15 compartmentalization, which Mr. Berman said.

16 **THE COURT:** Well, could you go on -- before you say
17 that -- and tell me why you think this case is like *Payment*
18 *Card and Literary*?

19 **MR. BROSHUIS:** Yeah. And so, *Literary* again I think
20 is more like *Fontenot* because you are talking about different
21 people with different damages cases.

22 But when it comes to *Visa/Mastercard* case, what you had
23 there is a situation where you had the same counsel
24 representing an important injunctive relief class and also
25 trying to represent a damages class; and there was a tremendous

1 amount of money at stake for both of those classes.

2 And with that much at stake and when you looked at the
3 relief at stake at all -- there was evidence of this -- it
4 turns out that you should have separate representation for both
5 the injunctive relief class and for the damages class.

6 Now, Mr. Berman says he hit a home-run. I would agree
7 there are certain aspects of the injunctive relief component
8 that's good stuff; but there is other stuff like the policing
9 of NIL collective money that there are a lot of people that
10 have a problem with.

11 **THE COURT:** We are going to get to that.

12 **MR. BROSHUIS:** Say that again.

13 **THE COURT:** We are going to get to that.

14 **MR. BROSHUIS:** Yeah. So, bottom line, we do think
15 that there is evidence that there is a problem here; that there
16 does need to be separate representation.

17 And could I just address the compartmentalization argument
18 in one minute?

19 **THE COURT:** Okay.

20 **MR. BROSHUIS:** Yeah. So they, say, "Well, our answer
21 to that is compartmentalization and we did things separately."

22 But if you notice, they didn't support any case law to
23 support that because there isn't any case law to support that.
24 That's an entirely novel proposition. And, in fact, we could
25 not find any cases --

1 **THE COURT:** There are cases where people negotiate
2 their civil right substantive claims and then only then to be
3 ethical do they negotiate their attorneys' fee claims.

4 So, it's not entirely a whole cloth. It is done in other
5 situations.

6 **MR. BROSHUIS:** And I will say this about even that
7 scenario -- I think this is a little different -- and
8 especially when it comes to the pay-for-play claims, just
9 because they say they compartmentalize those, I think we end up
10 in the same position because there is the danger that if you
11 are within striking distance of a global settlement -- and you
12 have agreed to terms on the *House* damages -- I think there is
13 the danger that, okay, when we are separately negotiating the
14 pay-for-play damages, there is the damages that we are going to
15 undersell them.

16 And that's where we think our \$24 billion estimate is
17 important because it does show that the amount that's actually
18 being included here is way too low.

19 And going to the attorneys' fee example that you provided,
20 *In Re: Bluetooth* actually speaks to this. The *In Re:*
21 *Bluetooth* case says that it's not enough that attorneys' fees
22 were negotiated separately; that even if you do things
23 sequentially like that, it could still be problematic.

24 And so, I think the same logic applies outside of that as
25 well; and I do think this is a major issue.

1 **THE COURT:** So, going back to the six-year-olds
2 playing kickball on the asphalt, let's say this is -- I'm just
3 sort of hypothesizing here -- let's say there was a lawsuit in
4 which some really good things were going to be done that would
5 be helpful to the third grader and -- but the third grader
6 couldn't have them because no one could represent the third
7 grader because no one would know if the third grader was going
8 to grow up to be a football player or not?

9 So, would the answer to that be: Too bad, we can do
10 whatever we want until you hit 12th grade? Or is there some
11 allowance that would or should or could be made to say that
12 there is a way to get benefits for people who are not yet in
13 need of them?

14 **MR. KESSLER:** So, Your Honor, our --

15 **THE COURT:** The *Payment Card* case, the merchants who
16 weren't taking payment cards were benefited. When they ended
17 up getting -- opening a little store and wanting to take credit
18 cards, they were benefited by the fact that there was an
19 injunction that said you can't do whatever it was that they
20 were doing, re-up charges or so on.

21 And if you couldn't have a class of future people, you
22 couldn't have a benefit for future people.

23 Do you have any answer to that or any solution that a
24 person in that position might be able to come up with?

25 **MR. KESSLER:** To whom are you addressing that,

1 Your Honor?

2 **THE COURT:** Mr. Broshuis, but I will ask you next.

3 Don't worry.

4 **MR. BROSHUIS:** Sorry, I thought you were addressing
5 Mr. Kessler or Mr. Berman with that question.

6 So, we also agree that it's very problematic, yes, that
7 you don't even know who these future class members are going to
8 be.

9 **THE COURT:** Right. So, should that mean they don't
10 get anything; that they don't get reforms to a system that they
11 might end up in?

12 **MR. BROSHUIS:** I think the answer is that it cuts both
13 ways; right. So, yeah, maybe some of these benefits they like.
14 Some of these things they don't like. But the problem from a
15 due process standpoint is that they don't have a choice because
16 at that point -- at the time they become athletes, the train
17 has already left the station. And so, they have had no input
18 in the process at all.

19 Now, Mr. Kessler will cite to you, you know, past cases
20 that involved athletics but all of those cases were meshed
21 within a union as well; and so the union had some involvement
22 with those cases.

23 And it's also important to note that one of those cases,
24 the Eighth Circuit case in *White*, was later aggregated in a
25 Supreme Court case when it comes to adequacy of the

1 representation. So, I think it calls into question that entire
2 line of cases.

3 **THE COURT:** Mr. Kessler, did you want to respond?

4 **MR. KESSLER:** Yes, very briefly. So, Your Honor, is
5 quite right. The future settlement provides this incredibly
6 improved system for every future athlete who comes into the
7 NCAA into Division I where there is now going to be billions of
8 dollars of compensation available that was never available
9 before; no scholarship limits without having to wait and bring
10 their own antitrust case in the future taking years of
11 litigation and probably graduating before they ever get any
12 relief.

13 This is a game changing future, and the difference
14 between -- you asked with the Second Circuit cases -- is that
15 every one of the cases that has found a need for separate
16 counsel is because they found that there was evidence that the
17 injunctive class members were sold out in some way in exchange
18 for benefits to the damages class members, every one where that
19 has happened.

20 Here, the injunctive class members are frankly getting the
21 most historic unpredicted relief in the history of the NCAA,
22 and it was negotiated first. And there are many, many cases,
23 which we cite in our brief including the sports cases, where
24 the same counsel negotiated -- like the *White* case, the same
25 counsel negotiated the injunctive relief and negotiated the

1 damages.

2 It was challenged by objectors. The Eighth Circuit found
3 there was a wonderful benefit for all of the class, and he is
4 wrong to say, well, there was a union. There actually was no
5 union at the time that the Reggie White settlement was done.
6 The union came later, and yet all of this relief was negotiated
7 together because in these sports cases you need these multiyear
8 settlements to create a new injunctive system that makes sense
9 to have a compromise.

10 Otherwise, it is endless litigation. Your Honor knows we
11 have already been in ten years or more of litigation, if you go
12 back to *O'Bannon*, it may seem endless to those who have been
13 involved in it.

14 This injunction is a way of changing the world where these
15 future cases hopefully are not going to be needed.

16 **THE COURT:** Okay. Why don't we move onto -- there is
17 still a cap argument. Some people -- objectors, I guess -- say
18 that while the cap used to be one dime, anything over -- or was
19 it a penny, Mr. Kilaru? -- anything over a penny was
20 pay-for-play, and now it's up to the -- some percentage of
21 20 million but it's still a cap.

22 So, is that wrong?

23 **MR. KESSLER:** So, Your Honor, I will address that.

24 **THE COURT:** Mr. Broshuis.

25 **MR. BROSHUIS:** Yes, I can address that, Your Honor.

1 We do think it is problematic because all of these
2 changes, they are important changes to the industry. They are
3 revolutionizing the industry, and it is outside of collective
4 gaining. And the cases say that a new cap --

5 **THE COURT:** Collective bargaining. There are cases
6 like that floating around or being talked about, but there is
7 nothing I can do about that except to say it says in the
8 settlement agreement that they won't take any stance against
9 collective bargaining. But, go ahead.

10 **MR. BROSHUIS:** And the reason I mentioned collective
11 bargaining, Your Honor, is solely for the reason that outside
12 of collective bargaining, caps are generally illegal because
13 you still have horizontal competitors who are agreeing to cap
14 the amount in a certain way.

15 Now, through collective bargaining, you have the
16 non-statutory labor exemption come into play. So, that's why a
17 cap is problematic still. And it's not just us saying that.

18 **THE COURT:** I don't get what you are saying. Try that
19 point again. I just didn't follow it.

20 **MR. BROSHUIS:** You are substituting one cap for
21 another cap.

22 **THE COURT:** Okay, a very much higher cap for an
23 illusory one. But go ahead.

24 **MR. BROSHUIS:** And it is not just us saying that.
25 One of the things that they pointed to in their opening

1 brief in footnote 7 is they had said they would ask the
2 National College Players Association led by Ramogi Huma for his
3 input on whether this makes sense from a cap perspective, from
4 the perspective of roping in new individuals.

5 Well, we know what his -- what his position is now because
6 his group, the National College --

7 **THE COURT:** We are not trying this in the newspapers.
8 I saw the article too. That's not evidence and that's not what
9 we are dealing with here.

10 **MR. BROSHUIS:** It is indicia, I think, of class
11 members' reaction, though, and how important advocacy groups
12 are looking at this. And so, that was my -- solely my point.

13 **THE COURT:** I see, okay. I can't remember if I said I
14 would let you talk on this point or not.

15 **MR. KESSLER:** Would you like me to address the cap
16 issue or it's up to you.

17 **THE COURT:** If you have anything you want to add,
18 yeah, go ahead.

19 **MR. KESSLER:** Just so -- every settlement is a
20 compromise. Your Honor knows that; right.

21 We sue. We would have liked an injunction that said there
22 is no cap, right, but when you settle you get a compromise; and
23 the cap we agreed to -- our economist estimates -- will get
24 Division I athletes in the future about 51 percent of all the
25 revenues, which almost mirrors the competitive market outcome.

1 So, this is an extraordinarily beneficial cap. And the
2 fact that you can have these is illustrated by all the sports
3 settlements. In the *Reggie White* class, in the *Junior*
4 *Bridgeman* case, in the *Robertson* case, all those were antitrust
5 class action settlements that imposed -- they didn't get
6 complete free agency with no limits. They got a new
7 compromised system.

8 Your Honor's own injunction in *Alston*, as you know, we
9 would have liked unlimited cash compensation. We didn't get
10 unlimited cash compensation in all *Alston*. You gave cash
11 compensation can only be for the scholarship awards, the
12 academic achievement awards up to \$5,960, I think it is, which
13 is what they were doing for the athletic achievement awards.

14 You can say that's a cap in your injunction. That's not a
15 cap. What that is, is Your Honor said, "You can't have
16 restrictions that go beyond this. You have to at least allow
17 that," a perfectly appropriate antitrust injunction.

18 What our injunction says, you can't have restrictions that
19 deprive the athletes from getting at least 22 percent in these
20 new benefits, which together with all these other benefits end
21 up equaling more than 50 percent. There is nothing wrong with
22 that.

23 And if we are wrong, if this is a future antitrust
24 violation, there is no release of future damages claims. I
25 don't think it is but this case is not resolving that issue,

but this type of compromise release is the only way to settle and bring stability to these types of antitrust claims for athletes as a class basis; and I believe it is totally appropriate. It's been affirmed by the Second Circuit in *Robertson*. It has been affirmed by the Eighth Circuit in *White*.

THE COURT: Okay.

MR. MOLO: In the *White* case it was a 67 percent share as opposed to 22 percent, the cap. And *White* also allowed for a further increase of that. So, it is materially different in terms of what we are talking about here qualitatively.

This is still a restraint on trade. It is. And they have got to offer a pro-competitive justification for it, as Your Honor is well aware. That hasn't been done.

And the fact that someone is getting more money under a cap than they would have in a prior cap doesn't make it any less of a cap, any less of a restraint on trade.

MR. KESSLER: So, I will forgive Mr. Molo because it is not his case. It was my case.

The idea that it was 67 percent of all revenues in *White* is absolutely false. It was a defined group of revenues that if you compared to this settlement, the settlement percentage of revenues in *White* was less than the settlement here. And I did both agreements.

(Pause in proceedings.)

1 **THE COURT:** Okay. Let's talk about the third party
2 NIL restrictions. I'm quite concerned about those.

3 The state of the briefing is that the settlement agreement
4 has some language about what kind of third party NIL that
5 athletes can get, and it refers to the business purpose and
6 something else.

7 **MR. KILARU:** Your Honor, can I maybe assist on that?
8 But I'm happy to wait for your question if you would like.

9 **THE COURT:** Yeah, I'm just trying to think. There are
10 two things that it asks for. One is a business purpose and the
11 other is something else.

12 What the Plaintiffs' answer to that is, oh, those things
13 are already in effect, so it's not going to be any worse and
14 please look at these guidelines at a certain web page, which I
15 did. And on that web page it did say things about third party
16 NIL but it said slightly different things.

17 And what I'm concerned about is whether the change as to
18 what's in the guidelines to what's in the settlement agreement
19 is going to mean that some people who are getting large sums of
20 money in third party NIL right now will no longer be able to
21 get them. That's my concern.

22 So, maybe -- it's a really addressed to Plaintiffs in the
23 first instance. So, let me ask them what they think and then
24 you can respond.

25 **MR. KESSLER:** So, Your Honor, I will take that first

1 and then Mr. Kilaru may want to --

2 **THE COURT:** You are going to have to get closer to the
3 mic, though.

4 **MR. KESSLER:** Sorry. Your Honor, can you hear me now?

5 I will address that first and then maybe Mr. Kilaru wants
6 to add in from the Defendants' perspective.

7 So, first of all, let's distinguish third party NIL from
8 the issue of the collectives; right. There is not limit --

9 **THE COURT:** Distinguish them, aren't they the same?

10 **MR. KESSLER:** No. So, the agreement clearly says
11 there is no limitation at all on third party NIL, like from
12 Nike or from a car dealer or from some other brand or anyone
13 else who is there. There is zero limitation in that.

14 And, in fact, the settlement agreement protects that by
15 saying the current NIL -- the current NCAA rules which do not
16 prohibit third party NIL must remain in effect. They can't
17 adopt any new rules to make it more restrictive. And, by the
18 way, that third party NIL doesn't even count against the pool
19 cap. So, that's unchanged.

20 **THE COURT:** No. The things -- the thing that is
21 currently there -- at least the only thing that was pointed out
22 to me was these guidelines, which are quite strict. They talk
23 about recruitment; that there can't be any recruitment. And I
24 don't know if there is, but you certainly read about things in
25 the newspapers.

1 **MR. KESSLER:** So again, Your Honor, I'm just talking
2 now about the settlement.

3 **THE COURT:** Are you going to continue to go on?

4 **MR. KESSLER:** So, the settlement agreement treats
5 collective rules different than the rules applicable to Nike or
6 to somebody else. I just wanted to start with that.

7 **THE COURT:** I don't see the difference. What is
8 the -- what is the --

9 **MR. KESSLER:** Well, the settlement --

10 **MR. KILARU:** Your Honor, can I -- just briefly on
11 this, Your Honor, I think it is really important to understand
12 what the current rules are before we go to what the change is
13 in the rules.

14 So, the current rules are that pay-for-play is forbidden.
15 That's in the policy Your Honor was mentioning. And that's
16 true in the context of institutions. Also true in the context
17 of NIL.

18 The July 1st guidance -- which, I believe, is what you are
19 referring to -- says you can't have improper inducements,
20 pay-for-play, and you can't have recruiting that gets you to
21 come to a school.

22 So, that's still -- like today without the settlement,
23 there is a ban on pay-for-play. And booster NIL payments or
24 NIL payments that are not for legitimate NIL are currently
25 prohibited. That is the status of the rules that exist.

1 **THE COURT:** What's going on about that?

2 **MR. KILARU:** Your Honor, I'm not going to comment,
3 respectfully, on what is or is not going on in terms of NCAA
4 enforcement; but I will say that that is the rule that's on the
5 books.

6 And in this settlement that Mr. Kessler and Mr. Berman
7 mentioned earlier --

8 **THE COURT:** What if we -- that we use that rule in the
9 settlement agreement and said the rule -- the rule for third
10 party NIL is and then quote your guidelines -- your guidance?
11 Would that work?

12 **MR. KILARU:** No, Your Honor. I mean, we --

13 **THE COURT:** What they are doing now?

14 **MR. KILARU:** Your Honor, we don't think that works --

15 **THE COURT:** Why?

16 **MR. KILARU:** -- because something that we negotiated
17 for -- and as Mr. Kessler and Mr. Berman said earlier is
18 inherent in a settlement -- you work out a compromise.

19 Our position is that pay-for-play is prohibited. And
20 Your Honor -- I can explain why that matters, but Your Honor
21 and the Ninth Circuit have both agreed with that.

22 We think and maintain and even maintained in the *House*
23 litigation that third party payments that are not for true NIL
24 are pay-for-play and are banned.

25 That was our litigation position in the case and we pushed

1 it through. And, you know, the case didn't go final because we
2 reached a settlement. So, what we are doing in the
3 settlement --

4 **THE COURT:** I'm sorry. Which case are you talking
5 about now?

6 **MR. KILARU:** In *House* there was a challenge to both
7 the old NIL rules and even to the July 1st policy. And our
8 position in that case, our position publicly, our position
9 generally is that it is pay-for-play if you don't have NIL
10 value that's actually NIL and is instead a booster trying to
11 pay someone to induce them to come to school or not.

12 So, we were defending that rule in court. And in the
13 context of the settlement we reached a compromise, which is as
14 follows: As Mr. Kessler said, if it is real NIL, there is not
15 a restriction on it. If it comes from a booster, it gets
16 evaluated carefully for whether or not it is real NIL or not.

17 And then in the event that it is determined that it is not
18 real NIL, there is a new back-end procedure that doesn't exist
19 today.

20 So, today if the NCAA -- if we think that there is a rules
21 violation, we go into enforcement. Tomorrow, if you approve
22 the settlement, that will go into an arbitration process. So,
23 this is we think and then the Plaintiffs believe it is an
24 approved -- excuse me, Your Honor.

25 **THE COURT:** Excuse me. It goes first to a thing you

1 are calling DEE -- which I forget what it stands for. It is an
2 NCAA agency as far as I can tell. It is not clear to me who
3 they are and where they come from and so on but that's where it
4 goes. And then after that, it goes to an arbitrator maybe.

5 **MR. KILARU:** That's correct, but there is always
6 someone who makes an initial enforcement decision. And the
7 settlement is clear that the penalty doesn't take effect if
8 there is a challenge at arbitration.

9 So, that is all new. That does not exist today. So,
10 again, this goes into the context of things that we negotiated
11 in the discussions.

12 I'm sure the Plaintiffs believe -- and I'm sure they will
13 speak to this -- that it is an improvement from the status quo.

14 It is also defensible under the law given that
15 pay-for-play bans have been upheld by many courts including
16 this Court in the Ninth Circuit in *Alston*.

17 **THE COURT:** But in this *House* settlement if it is
18 approved, you will be explicitly paying for play or allowing
19 schools to pay-for-play. So, this no play for pay thing isn't
20 going to be there anymore, is it?

21 **MR. KILARU:** It is, Your Honor. There is still going
22 to be a prohibition on pay-for-play, and there is discretion
23 for schools to make payments as they see fit under the new
24 regime.

25 **THE COURT:** And that won't be pay-for-play?

1 **MR. KILARU:** No, Your Honor. But, I mean, whatever --
2 I think that's correct, but I think setting that aside, the
3 fact of the matter is bans on pay-for-play have been upheld
4 time and time again. This is litigation challenging bans on
5 pay-for-play. This is something that came out of the
6 settlement process. I believe Plaintiffs believe it is an
7 improvement for the status quo, and for us it is an essential
8 part of the deal.

9 **THE COURT:** Wow. I'm trying to find -- I have got so
10 many notes here. I'm trying to find my notes of what the
11 settlement agreement says about third party NIL and how it
12 differs from -- how it differs from the guidance that's -- I
13 found on the web page, but my court reporter needs a break.
14 So, it's 4:00 o'clock. We are going to break until -- it is
15 4:02. We will break until 4:12 if that's enough for you,
16 Marla.

17 So we can all find what I'm talking about on the break.
18 What I would like you all to do, I think would work, would be
19 if everyone simply turned off their video and turned off their
20 audio and does whatever they want until 10 minutes from now;
21 and then we will come back and we turn on our video and turn on
22 our audio and we don't talk until everybody is back in. Does
23 that work, Tracy?

24 **THE CLERK:** That sounds great, Your Honor.

25 **THE COURT:** Okay.

THE CLERK: So, the court will be in recess until 4:12.

(Recess taken at 4:02 p.m.)

(Proceedings resumed at 4:12 p.m.)

THE COURT: Hello, everybody. It looks like we are all here. Maybe not Mr. Molo. So, we will go ahead. Okay, thank you. Are we ready otherwise, Tracy? Oh, and there is Mr. Molo.

So, I just heard from Mr. Kilaru and I found the thing I was looking for. The settlement agreement talks about a business purpose for the NIL and the fair market value of the NIL. The guidance talks about the worth of the NIL and that there can't be any recruitment.

So, what are we going to do with this? Do we go with the settlement agreement? Do we go with the guidelines? Do we come up with something new?

I found that taking the things away from people is usually not too popular. So, I don't know who to call on, maybe someone from Plaintiff or did I interrupt you in the middle of your thought, Mr. Kilaru?

MR. KILARU: No. I think Mr. Kessler was going to address it.

THE COURT: Okay.

MR. KESSLER: So, Your Honor, let me start out by saying we are happy to change it to the guidelines, but I don't

1 think the NCAA is. So, we don't have a meeting of the minds on
2 that; but from our perspective, we do not expect third party
3 payments from collectors to be reduced as a result of this
4 settlement.

5 And I will explain why. If anything, we believe they are
6 going to continue to increase. And, in fact, that's what's
7 happening right now every day. The collectives are raising
8 more and more money to support the schools about this.

9 The reason we do not think this will decrease in any way
10 is we have to compare the world before the settlement and the
11 world after the settlement with regard to third party
12 collective payments.

13 And I want to be clear. This only applies to collectives.
14 No one has ever challenged, will challenge, if Nike is going to
15 do a deal with athletes as they do or any of these other -- it
16 has nothing to do with collectives.

17 There is no rule about them regarding business purpose or
18 fair market value. It specifically has to do with when
19 collectives are doing these NIL payments. So, I just want to
20 put that aside.

21 **THE COURT:** Collective, either in the guidelines or
22 the settlement agreements. So, you are talking about some
23 difference between the collective and NIL, but I don't
24 understand what that is. It seems to me that -- all I know is
25 what I read in the papers and what I have read in your papers;

but it seems to me that collectives --

MR. KESSLER: Okay. So the rule you are referring to --

THE COURT: Might be justified or perhaps disingenuously justified by calling it NIL opportunities, and either it is or it isn't; but what do you propose to do about it?

MR. KESSLER: Okay. So, let me just refer to the rule. The rule that you are referring to in the settlement agreement is Section 3A in the appendix, and Section 3A is specifically about boosters and collectives.

You will see it says (as read:) "NCAA and conference rules prohibiting individually or collectively of a -- "boosters, individually or collectively" -- the collective of boosters is what we call collective; okay -- "of a member, institution from entering into NIL licenses with or for the benefit of current NIL athletes."

That's where they say that it is allowed unless the license payment is for a valid business purpose, et cetera.

So, I want to say this is only something that applies to boosters individually or collectively, someone affiliated with the school. If you are not affiliated with the school like Nike, this rule doesn't apply.

Okay. It doesn't --

(Pause in proceedings.)

1 **MR. KESSLER:** You are shaking your head, Your Honor,
2 so I --

3 **THE COURT:** These boosters, you can't prove that they
4 are connected with the school. Maybe they live in the same
5 town. Maybe they live in the same state. Maybe they went to
6 school there. Who knows why they want to do it, but some of
7 them at least clearly, I assume, have some sort of connection
8 to the school.

9 How are you going to adjudicate -- enforce something like
10 that? Tell me the number again of the -- I have got the
11 injunctive relief settlement right here. Tell me --

12 **MR. KESSLER:** Section 3A, page 19 of the appendix.

13 **MR. MOLO:** Article IV, Section 3A, page 18, yep.

14 **THE COURT:** And what -- so, the way I shorthand this
15 is, is this purpose or fair market value versus worth of NIL
16 and no recruitment in the --

17 **MR. KESSLER:** And I'm going to address that,
18 Your Honor, but I just want to maintain that if it's not a
19 booster -- and I understand you can argue who is a booster,
20 right, but everyone would say, for example, if Disney decides
21 to do an endorsement deal with an athlete, no one is going to
22 say Disney is a booster; right.

23 So people -- unrelated organizations are not at all going
24 to be subject to this. I just wanted to make that point.

25 **THE COURT:** That's not enough. I mean, that doesn't

1 answer the question. What if Mr. Fan loves his team and wants
2 to give them all a truck or wants to give them a million
3 dollars to get a new player or -- is that a booster? I don't
4 know. Is that a third party NIL giver? I don't know. Is it a
5 collective? Maybe he has got a friend, there are two of them,
6 so it is a collective.

7 **MR. KESSLER:** So, booster is a defined --

8 **THE COURT:** Is having your team win a valid business
9 purpose?

10 **MR. KESSLER:** So --

11 **THE COURT:** Rates commensurate with compensation to
12 similarly situated individuals who are not at the
13 member/institution.

14 So what, we look at other schools and see if anybody is
15 giving them a million dollars; and if the million dollars is
16 the test, then it's okay. But if nobody else gets a million,
17 then you can't get a million either? I mean, how does this --
18 how would this ever be interpreted?

19 **MR. KESSLER:** Okay. So, first, to address booster, it
20 is a defined term, which is on page 2 under the things -- it's
21 someone who the NCAA regulations define as a booster, as a
22 representative of athletics interest. You can say that's good
23 or bad, but it is a very specific term in their regulations now
24 that they have distinguished between boosters and non-boosters
25 that have different rules.

1 But I want to get to your more important, Your Honor. The
2 more important point is that under their current rules all of
3 this is prohibited. Anything that is -- they consider to be an
4 inducement for recruitment -- you know, helping to pay for the
5 athlete's services by a booster is prohibited.

6 The difference now is that if they decide to enforce it;
7 they bring their charges; they have an enforcement unit; they
8 have a decision unit; and they do the appeal and whatever they
9 decide goes. That's the current situation.

10 In the new situation with the settlement, they can bring
11 the same type of claim against the booster but a neutral
12 arbitrator who will be jointly selected decides this and you
13 can challenge what they are doing.

14 So whatever their enforcement has been or not been, we
15 don't see this making it any worse.

16 Having said that, Your Honor, I have no problem using the
17 existing language. That obviously came from the NCAA side in
18 terms of that.

19 **MR. KILARU:** Your Honor, I don't know if you are
20 intending to let others speak on this but if you are, that's
21 fine. We would like to say something on this, but I'm happy to
22 let others go if that's helpful.

23 **THE COURT:** I don't think anybody else has much new to
24 say about it except the lead counsel for the parties. So,
25 yeah, I would like to hear what you think could be done.

1 **MR. KILARU:** I think there is three issues,
2 Your Honor, and I would say the bottom line from our
3 perspective is there isn't anything that can be done. Let me
4 just explain why that is. So, first of all --

5 **THE COURT:** Well, that's discouraging.

6 **MR. KILARU:** I don't think it needs to be
7 discouraging, Your Honor, because it is about what Mr. Kessler
8 said, which is compare the status quo before to the status quo
9 after.

10 So, first of all, "booster" is a defined and understood
11 term. It has been in the NCAA rulebook for decades. It has
12 been operated. It has been applied. That's understood. So,
13 that's not some new and amorphous term that's out there.
14 That's from the rulebook.

15 Currently, boosters cannot make payments that are
16 pay-for-play. They cannot make payments that are inducements.
17 That is the rule. And at any moment that rule can be enforced
18 by the NCAA in a proceeding that would say a payment is
19 impermissible; student is ineligible, so on and so forth.

20 And then that would have to go through a very complicated
21 legal process to challenge that. That is the status quo today.

22 **THE COURT:** What about if graduated and gotten a job
23 at the local McDonald's?

24 **MR. KILARU:** The status quo today is that this rule
25 can be enforced and applied at any time. That is what the rule

1 is right now. It is the rule on the books. It is the rule the
2 member institution has agreed to. It is the rule that applies
3 to student athletes.

4 And we think that it is a manifestation of a broad
5 prohibition on pay-for-play that has been deemed
6 pro-competitive. That's point number one.

7 Second, in the post world, the world if the settlement
8 goes through, that's a better regulatory environment for
9 student athletes because, as Mr. Kessler said, payments that
10 are not made by third parties -- excuse me -- payments that are
11 not made by boosters defined in NCAA rules are fine.

12 Payments that are made by boosters go through a process,
13 and that process is the enforcement entity that we talked about
14 reviewing. And if there is a problem, unlike today, there is
15 arbitration before that penalty goes into effect. That is an
16 improvement from student athletes' perspective on the status
17 quo.

18 If the NCAA enforced tomorrow against an institution or a
19 student athlete for an improper booster payment, that would
20 have immediate effect.

21 Last, to Mr. Kessler's point, pre versus post settlement.
22 Presettlement there is this third party NIL, and there is not
23 this potentially huge amount of new money that is being
24 provided directly from schools to student athletes.

25 Post, you will have not only third party NIL; but you will

1 also have substantial benefits flowing directly from
2 institutions to student athletes; and that is the appropriate
3 comparison because this provision was carefully negotiated. It
4 is an essential part of the deal. And without it, I'm not sure
5 there will be a settlement to submit.

6 We think you look at the pre without -- I think, like,
7 look at all of the things the Plaintiffs just said about the
8 benefits that are going to flow from schools, the billions of
9 dollars. This is part and parcel of getting that in the
10 future.

11 **THE COURT:** Yeah, except that the schools don't have
12 to pay those benefits; and the schools may or may not be able
13 to pay those benefits, but clearly the collectives or the
14 boosters or the third parties do have those resources and are
15 willing to pay them, apparently. I mean, that's what I
16 understand.

17 But let me ask you this: This definition of "booster" is
18 someone that you knew or should have known has assisted in
19 providing benefits to student athletes.

20 So, today's third party donor is tomorrow's booster
21 because by tomorrow you know that they are people who like to
22 give money to athletes and now they are a booster and now they
23 have to -- now, they can't do it anymore.

24 **MR. MOLO:** Your Honor --

25 **MR. KILARU:** Your Honor, I think --

1 **MR. MOLO:** Under the definition, which is -- the
2 settlement agreement cites to the NCAA, you know, regulation of
3 the rule; and it says that a booster is defined as (as read:)
4 "any individual independent agency corporate entity; e.g.,
5 apparel or equipment manufacturer or other organization that
6 has promoted or assisted the school's athletic department or
7 the student athlete."

8 That's at -- we quote from that at page 17 of our brief,
9 we quote the actual rule. So, it is broader. You are correct
10 about that. It is not just limited to somebody who was an alum
11 or a fan of the school.

12 **THE COURT:** Well, I think we have got problems with
13 this, and I don't know -- I don't have a -- I don't have an
14 idea of how to fix them.

15 So, I think I'm just going to have to throw this back on
16 you-all to see if you can come up with something better,
17 something that's workable, that's consistent with what -- at
18 least acknowledges what it used to be and exchanges that with
19 something that makes sense and that's understandable and
20 enforceable and fair keeping in mind that taking things away
21 from people generally doesn't work well.

22 I saw a chart somewhere of all of the money that certain
23 athletes had received from collectives, and it was, like, the
24 first one on the list was 91,000; and there were others that
25 were more and some that were less but maybe --

1 **MR. KILARU:** I think there is -- I guess I would say
2 two things, Your Honor. I think the first is, again, if those
3 reports are true -- and I would like to address that -- all of
4 that could be prohibited by the drop of a pen at any point
5 under the current rules; but I would also note, as you said
6 earlier, this case isn't about the newspapers. It is about the
7 record.

8 There is in the record in this case a massive amount of
9 data about NIL, and it doesn't match what these public reports
10 say because often these public reports are about contracts that
11 are never performed on, that involve terms being offered to
12 athletes that actually have all kinds of poison pills that
13 don't work that often never get realized because there is abuse
14 and other things that are built into this current marketplace.

15 So, that's the reality right now. And if you look at the
16 evidence and the stuff -- the documents and the data you have
17 in this case, it doesn't match whatever newspaper reports are
18 saying.

19 And it is actually something that has been reported on
20 recently now that there is a tool in the NCAA called NIL Assist
21 that reflects what the deals actually are.

22 So, I don't think it is appropriate to blow up the deal on
23 the basis that there might be some payments that could be made
24 that may or may not exist after this rule.

25 If those payments are being made, there's not evidence of

1 them in the record in this case. If those payments are being
2 made, they can be stopped through an enforcement action
3 tomorrow.

4 And if the settlement is approved in its current form --
5 and this is an essential part of this being in its current
6 form -- those deals will go through a review process, and there
7 will be arbitration on the back end.

8 **THE COURT:** What is the tool you are referring to?
9 What's it called?

10 **MR. KILARU:** It is called NIL Assist. There has been
11 reporting on this. It basically puts out information on what
12 the deals are, but you have a lot of confidential information
13 in the *House* record that underlaid the damages models in this
14 case that shows what the deals were because that was something
15 that was provided in discovery. And there just aren't these --

16 **THE COURT:** It was under seal and shouldn't have --

17 **MR. BROSHUIS:** Your Honor, if I can just speak to that
18 for one minute.

19 **THE COURT:** We are going to have to go on. And I
20 think what occurs to me as you speak is that -- I haven't
21 talked about *Hubbard* yet -- but part of *Hubbard* is for everyone
22 to report their NIL deals.

23 So, maybe -- I was going to ask you anyway whether we
24 shouldn't just proceed with *Hubbard*; preliminarily approve
25 *Hubbard* and go ahead and finalize *Hubbard*.

1 While we do that, we will get all of this information
2 about approximate NIL deals that we can then use to try to
3 figure out what to do about *House*.

4 **MR. KILARU:** The approved requirement -- the reporting
5 requirement is in *House*, not *Hubbard*. *Hubbard* is about *Alston*.
6 The approval is in *House*. The requirement that you submit NIL
7 payments is in *House*.

8 **THE COURT:** Right.

9 **MR. KILARU:** There is also data being generated in
10 real-time in *House* that is being reported through the NCAA.

11 **THE COURT:** Okay, and that you have shared or will
12 share with the Plaintiffs so they can evaluate it?

13 **MR. KILARU:** Well, they got it from us. They
14 subpoenaed our institutions for the NIL data, so they have it;
15 and they had that when they agreed to this term as part of this
16 compromise.

17 **THE COURT:** Okay. Well, unless Mr. Berman or
18 Mr. Kessler can solve this problem or make a useful suggestion,
19 I think what I will do is just ask you to go back to the
20 drawing board on this point; and I will finish up today by
21 going on to my other questions.

22 **MR. KESSLER:** I think, Your Honor, we are going to
23 have to discuss it with the NCAA. We think it should be
24 possible to address Your Honor's concerns and address their
25 needs because I think the concept is that whatever is -- we are

1 not -- we were not trying to make anything prohibited that is
2 not already prohibited with respect to the boosters; and we
3 could add in language and things to make that clear, but let us
4 talk to the NCAA about that.

5 This was not designed to eliminate NIL from boosters that
6 currently has been permitted. So, we can work that out, I
7 think, with them.

8 **THE COURT:** That might be your view but I'm not sure
9 that's the NCAA's view; but anyway, let's go onto some other
10 points. We still got things to talk about here. Well, maybe
11 not so much anymore.

12 (Pause in proceedings.)

13 **THE COURT:** There are some objections about the pool
14 calculation being overstated, but I think I could just deal
15 with the briefs on that.

16 There was arguments about attorneys' fees and clear
17 sailing provisions and so on. There is some dispute about
18 that. I think I can figure that out unless the problem is the
19 definition of clear sailing agreement, which to me is the
20 attorneys get a fee that the Defendants agree not to object to
21 and nothing more, nothing less. Is that what everyone is going
22 by?

23 **MR. BERMAN:** That's my understanding.

24 **MR. KESSLER:** I think those issues can be addressed
25 when we do our fee petition, which is separate.

1 **THE COURT:** There is something wrong with your mic or
2 where you are standing or something. I could turn you up, but
3 then I will be turning everybody up. Maybe you've got your --

4 **MR. KESSLER:** I'm sorry, Your Honor, I don't know why.
5 But I was going to say, we subsequently are going to file our
6 fee petition. We don't think we have any clear sailing
7 provisions. We can address all of that, you know, at the time
8 of our fee petition.

9 **THE COURT:** Okay. Oh, the stay. What I thought about
10 the stay is it feels sort of unseemly to me to be telling
11 another judge what she can do with her cases.

12 What I would say is that I certainly would assume that
13 knowing what's going on in this case that another judge who had
14 a similar case or the attorneys who are handling it might see
15 there way clear or might see it is in everyone's interest not
16 to do a lot of time consuming and expensive work while they are
17 waiting to see what is going to happen.

18 And those of you who are in front of the Colorado judges,
19 I would assume could go to them and say, "Let's have a case
20 management proceeding whereby we will do maybe some discovery
21 to get things moving so it's not delayed too long, but we won't
22 do the class cert motion" or something along those lines.

23 I would be -- feel differently about staying *Cornelio* --
24 if that's how you pronounce it -- because that was filed after
25 the second amended complaint in *House*, and I would have a

1 different feeling about any new cases. If somebody starts
2 filing them tomorrow or the next day, I wouldn't have any
3 trouble staying those; but I'm reluctant to just out and out
4 stay *Fontenot*. So, I don't know if anybody is upset by that.
5 Who wants to address that?

6 **MR. KILARU:** Yeah, Your Honor, we think it should be
7 stayed. And I think, first of all, there is no dispute, I
8 think, among anyone that you can stay the case. I think you
9 did it in *Alston*. I think you can do it.

10 **THE COURT:** Well, should I or not?

11 **MR. KILARU:** Right, but should you or not. And I
12 think the key point to note is that this isn't sort of an
13 ordinary circumstance where you have different class actions.

14 The *Fontenot* proceeding is being used as a vehicle to
15 collaterally attack the settlement in front of the Court.
16 That's true and, in fact, they filed the *Cornelio* claim after
17 the settlement was submitted.

18 It is true in that in every filing they have made in the
19 *Fontenot* case, they have challenged the settlement including
20 most recently in a motion to oppose us getting a little more
21 time to respond to the compliant.

22 I don't know if I have ever heard of a motion to respond
23 to the complaint being opposed on substantive grounds, but they
24 threw in that there is a settlement approval and it is
25 collusive, et cetera. And they are using discovery in that

1 case to try to probe the settlement discussions here.

2 So, I think there is a lot going on in that case that
3 warrants a stay because it's not being treated as an
4 independent litigation vehicle. It is also being treated as a
5 way to probe and undermine the settlement here, which is very
6 much in Your Honor's jurisdiction.

7 **THE COURT:** What about making such a motion before the
8 Judge who is handling the case?

9 **MR. KILARU:** We can also do that, but I think
10 Your Honor has jurisdiction over the settlement if there is
11 one; and it's an appropriate exercise of jurisdiction here.

12 **THE COURT:** Why don't you try first taking the
13 arguments that you just made to -- is it Judge Sweeney?

14 **MR. KILARU:** Yes.

15 **THE COURT:** Charlotte Sweeney, take those arguments to
16 her. First, talk to the other side and see if you can't reach
17 some kind of agreement just as to efficiency and case
18 management. And if you can't, then make some sort of a motion
19 to Judge Sweeney -- and you can tell her what I said. I don't
20 know her. I haven't spoken to her -- but take it to her and
21 tell her the problems you are having and ask her if she would
22 give you some relief.

23 And if none of that works and you really feel badly about
24 it, I will deny it without prejudice, you can come back and ask
25 again.

1 Okay. So let's talk about *Hubbard*. Yes, sir.

2 **MR. BROSHUIS:** Yeah, just real quick, I want to -- I
3 feel like I need to respond because Mr. Kilaru is suggesting
4 that we have some sort of improper motives, and we certainly
5 have zero improper motives.

6 **THE COURT:** I'm not positing any of that, and I didn't
7 change my mind --

8 **MR. BROSHUIS:** Thank you, Your Honor.

9 **THE COURT:** -- so -- if you come back, which I hope
10 you won't, on this point.

11 **MR. BROSHUIS:** Thank you, Your Honor.

12 **THE COURT:** Okay. So, I want to talk about *Hubbard*,
13 though, and let me find my notes on *Hubbard*.

14 (Pause in proceedings.)

15 **THE COURT:** Oh, I did have one other question back on
16 the injunction -- well, that's a can of worms. I will wait on
17 that.

18 (Pause in proceedings.)

19 **THE COURT:** What would you say to the idea of
20 proceeding with *Hubbard*? I know that you have got it set up
21 now so that they both have to settle before either of them
22 settles; but *Hubbard* is so much less complicated than *House*.

23 **MR. KILARU:** Your Honor, we wouldn't agree to approve
24 one settlement without the other. They were negotiated
25 separately and with all -- the mediator makes clear, but we

1 wouldn't agree to approval or submission of one without the
2 other.

3 **MR. KESSLER:** So, Your Honor, our view would be they
4 have an agreement that they could -- they could in effect opt
5 out of *Hubbard* if the other settlements did not agree to. They
6 are protected. No money will be distributed if the other
7 settlements are not done.

8 But since there literally is no issue about *Hubbard* --
9 other than the notice issue that Your Honor wants us to address
10 with the notice forms, which we will do -- other than that,
11 there is no reason not to just preliminarily approve *Hubbard*
12 and let it go in advance.

13 There is really no prejudice to the NCAA regarding that,
14 you know, because it is a very discrete issue. It is just
15 damages. It is just very specific for these academic
16 achievement award damages. It is a separate class. It is a
17 separate fund, and they are still protected because no money
18 will get paid out if it is not all approved if they don't want
19 it to be.

20 **THE COURT:** There are two issues that I have
21 identified with *Hubbard*. I hope I remember them now that I
22 found them in my notes. One is the class period. The only
23 time that people weren't doing academic achievement awards was
24 the three years between, what, 2020 -- three academic years. I
25 forgot which ones -- 2020 through 2023.

1 However, the *Hubbard* class identifies five years going up
2 to 2023 or '24, two more years.

3 Rascher doesn't give us the data for the second two years
4 or the last two years. I don't understand why we have those
5 two years in there. Why isn't it a three-year class?

6 **MR. KESSLER:** I think the claims only continue through
7 when the damages -- when the benefits were prohibited, which
8 was until 2021, but that if in defining the class, if there is
9 someone who has those claims earlier -- in other words, there
10 are not five years of payouts in terms of that.

11 **MS. PARSIGIAN:** Yeah. Your Honor, I think I can speak
12 to this. For the court reporter, I'm Jeanifer Parsigian.

13 So, for the *Hubbard* case we have a single year where we
14 are doing damages claims, the first year that the payments were
15 allowed but -- and our position has been that the schools
16 hadn't budgeted, hadn't caught up, and so athletes that would
17 have gotten those awards did not that year.

18 Then the future -- the forward date of the class extends.
19 Those individuals likely don't have any claims under *Hubbard*
20 but the release is coextensive with other releases just of how
21 we structured the classes here.

22 **MR. KESSLER:** But Your Honor is right. There are no
23 claims after -- after 2021, '22, there are no damage claims
24 asserted in *Hubbard*. They were never asserted.

25 And so, even though we can make the *Hubbard* class period

1 earlier, the NCAA wanted all the class periods to be all the
2 same; but there are no claims after that date in there.

3 **MR. KILARU:** Your Honor, the class wasn't certified so
4 the claim would have run past 2022. I mean, typically these
5 things run from whatever the date of class certification is.

6 So, we think it is appropriate to have -- if we even are
7 talking about *Hubbard* -- but I want to go back to that in a
8 minute -- we think it is appropriate for the release to run to
9 when it runs to because there are zero value claims once *Alston*
10 payment was permitted; but there is a release and we want the
11 release.

12 **MR. KESSLER:** Your Honor --

13 **THE COURT:** Does this have anything to do with the
14 other non-academic achievement awards benefits that came out of
15 *Alston*; the laptop, the internship, the whatever else, is that
16 what's happening here?

17 **MR. KILARU:** I think benefits are being provided post
18 *Alston* or they are not being provided all consistent with the
19 permissive injunction that Your Honor entered.

20 You can either do it or not do it. That's been happening
21 for quite some time. So, I don't think anyone would have a
22 valid claim that they are being denied *Alston* payments under
23 their school's criteria after the date on which their school
24 started making payments.

25 There is no reason to not include that in the scope of the

1 release because the case would have gone forward if it went
2 forward.

3 **THE COURT:** Okay. Here is another idea I have about
4 *Hubbard*. You want to have everybody, I guess, find out -- or
5 maybe they already know -- what the qualification rules were
6 for each of the schools that a class member went to, and then
7 you want to find out which years that class member played; and
8 then you want to find out whether the class member qualified
9 under the qualifications, which are all different -- they are
10 not all different but some of them are different.

11 And they are under seal. And that's another thing we have
12 got to get that resolved somehow with code names or something
13 because people want to know and they have good reason to.

14 But the athletes then have to show that they would have
15 qualified. So, School A says you have to have a 2.0, and
16 School B says all you have to do is not flunk out; and School C
17 doesn't care what your grades are. They just care if you went
18 to school or not. It's all different. And then some of them,
19 I guess, have different amounts. Most people gave the 5,980
20 but not everybody.

21 So, and all of this has to be explained on the claim form;
22 and all of this has to be calculated out. What if we just said
23 everybody who was on a team at a school that had an academic
24 achievement award gets \$6,000 a year for every year they
25 played?

1 That's giving them an extra 20 bucks. How about that?
2 Wouldn't that be really a lot easier and more understandable
3 than trying to figure out what all these different
4 qualifications --

5 **MR. KILARU:** Your Honor, we negotiated for a defined
6 settlement amount. That's not even close to what we negotiated
7 for; just say you have to pay everyone \$6,000 if they claim
8 their school is making policies. I mean, not every school
9 made --

10 **MS. PARSIGIAN:** If I may, that's what we have
11 attempted to do by having the form look as it does. As you
12 noted before, the vast majority of the criteria -- while they
13 look extremely different in the appendix that you have seen --
14 are -- go down to the reality that you are eligible,
15 academically, athletically, and on a team.

16 And we think we can do this claim just with those four
17 questions that we have asked and knowing the years and school
18 that they have attended.

19 So, we can explain that further to Your Honor if you would
20 like; but the vast majority of their claims were simply -- of
21 the criteria were simply these four issues.

22 And if you met those four -- for example, if you are
23 academically eligible, you have to have a 2.0. So, while those
24 look different in all of the productions that the Defendants
25 made, they are actually virtually identical.

1 So, we have worked through all of it and come up with a
2 claim work that allows us if you have answers to those four
3 questions to determine that you are eligible; and it is very
4 similar, as Your Honor is saying, to the reality that they were
5 simply on a team.

6 Some of them required they had a scholarship and some of
7 them depend what sport it is on, but we know we can do it with
8 just the information that we have asked for on the claim form.

9 **MR. KESSLER:** So, Your Honor, to make this very
10 simple, we are agreeing on a very simple criteria as Your Honor
11 is suggesting.

12 The only thing that Mr. -- that -- that NCAA counsel is
13 pointing out, we negotiated an overall settlement amount which
14 will not get \$6,000 to every one of those athletes because it
15 is a compromise. It is a percentage of that number, so it
16 won't be 6,000 but that just --

17 **THE COURT:** *Hubbard* --

18 **MR. KESSLER:** We got, like, 61 percent of the damages
19 or something. So, it is not a definite number but they all
20 will get it.

21 **THE COURT:** Okay. Maybe it is not 5,980. Maybe it's
22 some other number. And that's another question I had is do we
23 have a number from Dr. Rascher or anybody else that says what
24 would the damages be if all these people did get everything
25 they were supposed to?

1 How many athletes were there? How many schools had these
2 things? How many of them were at the max? How many -- you
3 know, there has got to be some sort of economic analysis that
4 could be done and maybe --

5 **MR. KESSLER:** Yes, so --

6 **THE COURT:** -- and I just don't know what it says or
7 maybe I do and don't have it in front of me, but that would be
8 of interest. And then you can take that number, whatever it
9 was; divide it by the number of school years -- student school
10 years and give everybody however much it was supposed to be.

11 **MR. KESSLER:** So, Your Honor, we already have from
12 Dr. Rascher an analysis which indicates he came up with what
13 would be the actual damages in total versus the 200 billion we
14 agreed to. And we have gotten 63.9 percent of the total amount
15 of damages for everyone.

16 The only adjustment there is -- is if Your Honor awards
17 attorneys' fees and costs, that obviously will further change
18 the number at that point.

19 But we already know that, you know, subject to attorneys'
20 fees and costs it's going to be 63.9 percent of that full
21 number for all these athletes; and we have come up with a very
22 simple way to let them qualify with just a few questions rather
23 than having to show each individual tiny criteria that a school
24 might have had when they were opposing class certification.

25 So, we have come very close to what Your Honor is asking for.

1 **THE COURT:** And is the Defendant in agreement with
2 that?

3 **MR. KESSLER:** I believe so. We only care about the
4 200 million. They don't care about -- that we made very simple
5 criteria for people to get it because it is a fixed sum
6 settlement. It doesn't go up if there are more recipients or
7 go down if there are fewer. They pay the 200 million. So, I
8 think they are deferring to us as to how to divide it up to
9 allocate it to the criteria.

10 **THE COURT:** The report you are referring to, is that
11 in the record? Rascher's --

12 **MR. KESSLER:** Yes, the declaration is submitted.

13 **THE COURT:** Where is it?

14 **MR. KILARU:** It was filed along with their class
15 certification papers. They filed class certification papers,
16 Your Honor. It was filed with that.

17 **THE COURT:** Okay.

18 **MR. KILARU:** It was a total number of 313 million. We
19 didn't file our opposition to that; but for purposes of
20 settlement, we agreed the 200 million is an appropriate
21 resolution. And, as Mr. Kessler said, defer to them on the way
22 to allocating that to their putative class members.

23 **THE COURT:** I see. You don't care if they make
24 everybody show their grade point average or not.

25 **MR. KESSLER:** So --

1 **MR. KILARU:** Your Honor, I don't know if we have a
2 view on that, but I just want to be clear on something. We
3 don't support preliminary approval of the *Hubbard* settlement
4 standing alone.

5 And we disagree with Mr. Kessler; that you can sort of say
6 it's okay and we can walk it back later depending on what
7 happens in *House*. Like, we don't agree with that.

8 I mean, I guess, if the question is if there is not a
9 *House* settlement in its current form, what's our position on
10 *Hubbard*? We don't agree.

11 **THE COURT:** So, you don't -- going back to his first
12 point, which was why not just settle it but not pay any money
13 and you can withdraw if *House* doesn't go through, you don't
14 want to do that.

15 **MR. KILARU:** No, we don't want preliminary approval
16 and sort of a notice process going forward if we don't have a
17 settlement on all the issues that we have negotiated and went
18 through negotiations.

19 **THE COURT:** Okay. It's not obvious that that would be
20 what someone in your position would want; but if that's what
21 you want, you can ask for it or hold out for it.

22 **MR. KILARU:** I mean, we have to talk amongst our
23 clients; but going back to the earlier issue, it is a central
24 issue for us; and I think the Plaintiffs know that because we
25 discussed it at length.

1 I think representing their class, they agreed to it. So,
2 I don't think -- really understand why in this hearing we are
3 hearing that actually changes to that are appropriate. That's
4 part of the bargain that they struck, and they submitted for
5 preliminary approval.

6 **THE COURT:** Oh, it was I who suggested it. You are
7 talking about settling them separately.

8 **MR. KILARU:** I was confusing the issues, Your Honor.
9 I was talking about the issue that came up in *House* related to
10 the third party boosters and saying how that issue --

11 **THE COURT:** Oh, okay, well, that's different; but the
12 idea of settling them -- of preliminarily approving the
13 settlements and doing the notices separately is something I
14 raised, not something that they raised. So don't blame.

15 **MR. KILARU:** I wasn't suggesting that specific piece
16 of it; but to the extent there was a suggestion that that's
17 what we agreed to, I don't agree to that.

18 **THE COURT:** No. Okay. All right.

19 **MR. KESSLER:** Your Honor, the question about
20 Dr. Rascher, it's 227-5 in your ECF number -- 227-5 -- filed on
21 July 26th, 2024. That Rascher declaration discusses his -- the
22 *Hubbard* damages -- it discusses many things, but it discusses
23 the *Hubbard* damages regarding that.

24 **THE COURT:** Okay. All right. Well, what I want to --
25 I'm not prepared to make a ruling today, as you can probably

1 tell, whether to preliminarily approve the settlement.

2 I have -- I want to move forward on the notices and
3 claims. I think it seems to me likely enough that there will
4 be a settlement even if there is some changes to what's been
5 agreed to so far; but it's worth working on the notices and
6 claims.

7 If you want to take a shot on it based on what I said,
8 that would be fine. We did one, and I can send it to you for
9 what it's worth if you want to take a look at it.

10 And then on the other things, there are a few things I
11 might have asked you to talk to each other about a little more,
12 and maybe you will consider making some changes that would make
13 more likely that the settlement could be preliminarily approved
14 and perhaps more likely that it would hold up in future forums,
15 which is always something that you need to think about.

16 And if you are able to make some changes along the lines
17 of what we talked about, you could perhaps submit a new and
18 different motion -- a new and different motion for preliminary
19 approval or just come back and brief it and say, "Here is what
20 we can agree to; what about this" or you can come back and say,
21 "Forget it. We now see that it is a bad idea. We are just
22 going to try the case. Give us a trial date" or whatever.

23 So, you can get started on the notice and claims, and you
24 can get started talking to each other about some of these other
25 ideas and maybe you want to book a session with Professor Green

1 to talk with him about some of them. Maybe you want to include
2 Mr. Broshuis and Mr. Molo in a discussion and -- or at least
3 consider what they had to say.

4 **MR. KILARU:** Your Honor, just so I can understand,
5 when you say "work on the notice," I mean, I think we have a
6 lot of -- based on your comments today, we have to talk about
7 whether we have a deal; and we have to talk about the
8 Plaintiffs. We have to talk amongst each other.

9 We can work on what notice documents would look like to
10 address your concerns earlier. We can work on what orders
11 would look like based on your very initial comments about
12 forum.

13 But I don't know what it would mean to start providing
14 notice if we don't have a settlement yet. So, if that's what
15 you meant in terms of the form, we can do that.

16 **THE COURT:** No, no, no. I didn't mean to say -- maybe
17 I wasn't clear. I didn't mean to send out the notice.

18 **MR. KILARU:** Okay.

19 **THE COURT:** To draft a notice that resolved some of my
20 problems with the clarity of the current version. One might
21 argue that that's a waste of time because you are not going to
22 settle anyway and we won't need any notices; but I'm suggesting
23 that in your spare time you could try and edit those notices so
24 that we will have them if we are able to come up with a
25 settlement.

1 **MR. KESSLER:** So, Your Honor, if I can just make sure
2 we are all on the same understanding of where we are; okay.

3 Your Honor, raised a few different points. One point you
4 raised about making the release clarifications part of the
5 settlement agreement where the parties are in agreement, I
6 think we can go do that. I don't think there is going to be
7 any dispute. We will be able to work that out and amend the
8 settlement agreement for that. That's not going to be an
9 obstacle, at least as I understand what you want and what our
10 agreement is with the other side.

11 **THE COURT:** Sure.

12 **MR. KESSLER:** The second area where you asked us to go
13 back -- and I think there is only one other but you will tell
14 me if I'm missing something -- the second area is this booster
15 NIL language. And that's one where -- you know, where my
16 colleague, Mr. Kilaru was saying he doesn't know if they are
17 willing to change or not.

18 So we have to sit down with them and that either we will
19 come back to you and say, "Yes, we have come up with some
20 changes that -- and now we would like you to approve it that
21 way." Or if we can't reach an agreement with them, then we
22 will tell you that we couldn't reach an agreement; and you
23 either approve or disapprove.

24 And what I was going to suggest -- and I think those are
25 the only two areas. If you think there is something else,

1 Your Honor --

2 **THE COURT:** There is the future injunction. There is
3 the two-sided problem of a class rep and an unconflicted
4 attorney to represent the class of future athletes in the
5 injunctive relief class and whether a -- whether a ten-year
6 class of people who are not ascertained and can't be
7 represented and can't be given notice -- I mean, we have talked
8 about possible solutions to that, and I will have to look into
9 that -- but that's one that I was quite concerned about.

10 **MR. KESSLER:** Well, you are correct you wanted us to
11 be clear on the class reps, which I know we have to satisfy you
12 on that, but is there some -- I just didn't -- I know we
13 discussed the issue but I --

14 **THE COURT:** Well, there is a potential conflict of
15 attorneys representing both damage -- present damage class
16 members and future injunctive relief class members a la *Amchem*,
17 *Ortiz*, *Payment Card and Literary*.

18 Some have argued that there is a sort of inherent conflict
19 between the same attorneys representing both those types of
20 classes. You have got responses to them and I have heard them,
21 and I will think about it some more but I think that's an
22 issue.

23 **MR. KILARU:** Your Honor, can I suggest something,
24 which is -- because I actually think there is work we need to
25 do, and I don't actually agree with Mr. Kessler that it's

1 necessarily a binary whether we have changes or we don't.

2 Can I suggest we confer with the Plaintiffs and come up
3 with a date on which to make a supplemental submission to you?
4 And that will contain our position on these issues; whether
5 there need to be changes on the booster piece, why there
6 shouldn't be a concern about the forwards/backwards, assuming
7 we can resolve the first, and amendments to the notices as
8 appropriate based on your comments.

9 And, you know, if we can -- we will submit to you what our
10 best effort is on that, and then at that point we think that
11 will be helpful as opposed to trying to do this kind of
12 onesie-twosie in a way that doesn't really follow.

13 **THE COURT:** I'm not sure what the difference is
14 between what you just said and what we were talking about, but
15 what you just said sounds fine to me.

16 (Pause in proceedings.)

17 **THE COURT:** You could also negotiate. I mean, there
18 are certain -- I guess, what you are talking about is a
19 negotiation, but you don't necessarily have to reach an
20 agreement on the third party NIL issue if you can offset that
21 with something else. But then, of course, you get into the
22 whole conflict problem. But as long as you stick, perhaps,
23 with damages and don't mix in injunctive relief, you will be
24 okay.

25 **MR. KESSLER:** Your Honor, the only thing I would --

1 and I understand, I think, your direction. I think it would be
2 helpful, at least from our standpoint, to set, like, a deadline
3 by which we get back to you because, frankly, from the
4 Plaintiffs' standpoint, if we are going to solve these issues
5 and go forward, that's great.

6 And if not, then we want a trial date. If we are not
7 getting a deal, we don't want to push this off, you know, very
8 long. So, I would say give us, like, three weeks or set a date
9 by which the parties come back to and either say, "Here is some
10 changes we have agreed to; here are proposals" and submit new
11 papers or we come back and say, "We can't agree to anything
12 other than what we have agreed to." And if Your Honor rejects
13 it, then we will need a trial date. So, I think we should have
14 a schedule.

15 **THE COURT:** Okay. Well, I was going to say a week to
16 come up with the easy things, like the changes to the notice,
17 the changes to the release, the changes to the settlement
18 agreement, everything that's just a matter of changing some
19 words around, you could maybe do in a week or maybe two; and
20 then another week or two after that to meet and confer and
21 negotiate and try to see if you can reach an agreement or at
22 least enough that you can feel confident that you will be able
23 to reach an agreement that you are all willing to work on it
24 some more and --

25 **MR. KILARU:** Your Honor --

1 **THE COURT:** -- you can get that done, let's say, in
2 four weeks.

3 **MR. KILARU:** I think we can agree to three or four
4 weeks on everything, but I don't really understand --
5 respectfully, I don't understand the logic of making some
6 changes to the settlement agreement while we are still talking
7 about other changes to the settlement agreement, assuming we
8 are even willing to make those changes. It seems to me much
9 more efficient to do it all together.

10 **THE COURT:** Oh, sure. You don't have to also make the
11 changes. You will just agree on what they are going to be.

12 What I'm picturing is an addendum to the settlement
13 agreement which says, "Section X, Y and Z is amended to clarify
14 that you aren't waiving your Choh claims and your Johnson
15 claims."

16 And you won't file it. You won't get it signed. You
17 won't do anything with it. You will just come up with the
18 verbiage and agree that if you -- everything else is resolved,
19 you will have that plug in, and we won't have to wait another
20 week for that to happen.

21 **MR. KILARU:** And -- we can agree -- I suppose we could
22 try to do that with the Plaintiffs, but what goes in the notice
23 is pretty tied to what the settlement is.

24 **THE COURT:** Well, there's other stuff. You could have
25 two options -- I don't know. If it doesn't work, it doesn't

1 work. I'm not wedded to it. And actually, it is really
2 something more for Plaintiffs to worry about than you since it
3 is their clients that they are communicating with.

4 **MR. KESSLER:** So, Your Honor, why don't we agree that
5 we will report back to you on everything -- you know, three
6 weeks, you know, on everything. And, you know, if we can do
7 some earlier, we will do some earlier, if we can move that
8 forward. Then we know by the end of three weeks, we will
9 either have addressed these issues or not addressed them and we
10 will let you know.

11 **THE COURT:** Okay. Is that all right with you,
12 Mr. Kilaru?

13 **MR. KILARU:** Yes, Your Honor.

14 **THE COURT:** Okay. So, I have got permission from my
15 court reporter and my law clerk and my clerk that I can go a
16 little bit beyond 5:00 o'clock, which I don't like to do, but I
17 want to go through my notes as quickly as I can and see if
18 there's any pressing questions that I didn't get to that I want
19 to ask you.

20 So, if you-all don't mind staying for a few more minutes.
21 I was also hoping to give everybody a short closing statement,
22 but I don't think we will have time for that; and it probably
23 won't be that helpful anyway.

24 But if you don't mind, give me a couple minutes to look at
25 my notes.

1 (Pause in proceedings.)

2 **THE COURT:** What would happen if we -- vis-a-vis the
3 ten-year term for the injunction, which ends up being an
4 injunctive relief class, that necessarily then ends in ten
5 years -- I don't know, maybe Defendant doesn't mind that.
6 I guess it's -- maybe it's just the objectors who mind that.

7 But what that made me question was: Do you need to have a
8 ten-year class period in order to have a ten-year injunctive
9 relief period?

10 Maybe we just say the class has ended but the obligation
11 to obey the Court's orders carries on for ten years, and class
12 counsel are charged with monitoring and making sure that it
13 isn't changed.

14 **MR. KILARU:** Your Honor, I don't think that works. To
15 Mr. Kessler's point earlier, you need to have an injunction
16 that's binding on folks with the right to object as they see
17 fit for this to work.

18 It doesn't work to say there is a class of defined people
19 that are bound by this injunction, and then anyone on day two
20 can say actually it should be something different.

21 That's the reason it is a ten-year settlement, and there
22 is appropriate objections for people in the objections process.

23 **THE COURT:** Okay.

24 **MR. KILARU:** I would just note, for example,
25 Your Honor, you have entered injunctions in the past that had a

1 finite date; and it didn't stop another lawsuit from being
2 filed the date after that. So, I think that's the concern we
3 have with not having the ten-year period.

4 **MR. KESSLER:** Can I just note, Your Honor, that the
5 injunctive class doesn't give up any damages claims. So if
6 anyone thinks during that period there is some violation of the
7 antitrust laws or otherwise -- including by what's being done
8 under the settlement -- they are not bound in any way, shape or
9 form. They simply can't seek an injunction under the antitrust
10 laws to change the settlement terms. That's the only
11 consequence in -- of that ongoing class membership.

12 (Pause in proceedings.)

13 **THE COURT:** Well, this is a really minor one, but
14 I guess I will say it as long as we have a little more time.

15 There is a question about whether NCAA rules are attacked
16 and also whether conference rules are attacked, and the second
17 amended complaint says the conference rules are attacked to the
18 extent that they incorporate objectionable NCAA rules.

19 In the release -- in the agreement, it says that it
20 objects to NCAA rules and conference rules and doesn't say
21 conference rules that incorporate NCAA rules.

22 So, it's potentially broader and potentially attacking
23 other rules that weren't mentioned in the second amended
24 complaint.

25 I don't know if this is a big deal or not. I don't know

1 if it is meaningful or not. I don't know if anybody even knows
2 what I'm talking about, but does anyone have any thoughts on
3 that?

4 **MR. KESSLER:** The only thing I would note, Your Honor,
5 is the release is just for NCAA conference rules that limit
6 compensation and benefits, you know -- in other words, it is
7 the same subject matter area or which it is almost the same.
8 We can go look at that. It is not a release of conference
9 rules in general that might relate to other subjects.

10 **THE COURT:** Okay. Why don't you take a look at that
11 language if you can find it and see if it needs to be tightened
12 up at all.

13 **MR. KESSLER:** Okay.

14 (Pause in proceedings.)

15 **THE COURT:** Oh, there was an inconsistency in the
16 *Hubbard* damage calculations between the description of what
17 they would be in the motion versus Dr. Rascher's description.

18 The description in the motions talked about relative
19 amounts, and Rascher's report talked about pro rata amounts.

20 I'm assuming if there is some difference, you are going
21 with Rascher and not with what's in the motion. Can I assume
22 that?

23 **MR. KESSLER:** Rascher is the way we are going to
24 allocate. I don't think there is any substantive difference.
25 I think Rascher uses a different word but it's the same thing.

THE COURT: Okay. Well, I think I have more questions, but I don't think that it's a good time to try to look for them now.

If I come up with something that I really want to know about, I might ask you, let's say, for a further memo on a certain point and have each of you give me a page or a letter brief on something that I have a problem with.

Otherwise, I guess you have agreed to get back to me in three weeks with a prognosis about all of the things that we have talked about today and then we will take it from there.

MR. KESSLER: Yes.

THE COURT: Maybe you will give me a letter brief or a stipulation or something to tell me what's going on.

MR. KILARU: We will work out some kind of joint submission, Your Honor. I'm not sure we will agree on everything, but we will file something that makes sense.

MR. KESSLER: (Inaudible), Your Honor.

THE COURT: And the harder stuff later, you could do that; okay. Anything else burning from anybody?

(No response.)

THE COURT: Okay. Thank you everyone and thank you to my staff for staying over. And if I need a hearing after I get your report, I will set one. If I don't, I will just try to rule on it. Okay.

MR. KESSLER: Thank you.

MR. BERMAN: Thank you, Your Honor.

MR. BROSHUIS: Thank you.

THE CLERK: Court is in recess.

(Proceedings adjourned at 5:08 p.m.)

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3 **CERTIFICATE OF REPORTER**

4 I certify that the foregoing is a correct transcript
5 from the record of proceedings in the above-entitled matter.

6
7 DATE: September 6, 2024

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11 _____

12 Marla F. Knox, CSR No. 14421, RPR, CRR, RMR
13 United States District Court - Official Reporter

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